



U.S. Citizenship
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FILE: [REDACTED]
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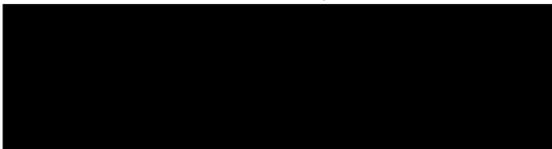
Office: CHICAGO

Date: DEC 20 2007

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), *amended by* Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Chicago, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had not demonstrated that he had (1) continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988; or (2) maintained continuous physical presence in the in the United States during the period from November 6, 1986 through May 4, 1988.

On appeal, counsel states that the applicant has submitted substantial documentary evidence and thus has established his eligibility for permanent resident status under the LIFE Act by a preponderance of the evidence.

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.12(e).

Although Citizenship and Immigration Services (CIS) regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In the affidavit for class membership, which he signed under penalty of perjury on September 10, 1990, the applicant stated that he first arrived in the United States in January 1981, when he crossed the border without inspection. On his Form I-687, Application for Status as a Temporary Resident, which he also signed under penalty of perjury on September 10, 1990, the applicant claimed to live at the following addresses in New York during the relevant period:

January 1981 to November 1983:
November 1983 to November 1985:
November 1985 to August 1989:



Regarding his employment history during this period, the applicant claimed to work for the following:

January 1981 to September 1983:
October 1983 to August 1985:
December 1985 to June 1989



In an attempt to establish continuous unlawful residence since before January 1982 through May 4, 1988, the applicant furnished the following evidence:

- (1) Billing records from [REDACTED], S.C. for services rendered to the applicant on April 19, 1986, April 27, 1986, February 21, 1987 and May 8, 1987. The services are identified simply as "O.V."
- (2) Affidavit dated September 9, 1990 by [REDACTED], claiming that he has known the applicant since 1981 and that he has continually resided in the United States since that time.

He claims that he is the applicant's brother-in-law, and that the applicant departed the United States from June 1987 to July 1987.

- (3) Notarized letter dated August 6, 1990 from [REDACTED] claiming that the applicant resided with her at [REDACTED] New York, from November 15, 1985 to August 7, 1989.
- (4) Affidavit dated August 6, 1990 by Mr. [REDACTED], claiming that he has known the applicant to reside at [REDACTED], from January 1, 1981 to October 30, 1983. He further claims that he is able to determine the beginning of his acquaintance with the applicant from the fact that he was "working as a handyman at [REDACTED] Corp in Brooklyn.
- (5) Affidavit dated August 6, 1990 by [REDACTED], claiming that she knew the applicant has resided at [REDACTED], Queens, from November 1983 to November 1, 1985 and at [REDACTED] New York, from November 15, 1985 to August 7, 1989. She claims that the basis for this knowledge is that he worked as a loader at [REDACTED]
- (6) Affidavit dated August 24, 1990 by [REDACTED], claiming that he has known the applicant to reside in the United States from December 1985 to June 1989 when he worked at a newsstand at [REDACTED] in New York.
- (7) Statement dated December 13, 1983 from [REDACTED] claiming that the applicant worked as a handyman in his building complex located at [REDACTED] since October 1983.
- (8) Letter dated February 2, 1981 from [REDACTED] Account Executive at [REDACTED] claiming that the applicant has been working as a loader with the store since January 25, 1981.
- (9) Apartment lease dated November 2, 1983 between the applicant and [REDACTED] for the premises located at [REDACTED] (Garden Apartments). The lease indicates the term was for two years, from November 2, 1983 to November 1, 1985.
- (10) Handwritten letter dated September 9, 2003 from [REDACTED], written on the stationery of [REDACTED] Center. The letter claims that the applicant was under her care during the years 1986 and 1987.

On March 28, 2005, CIS issued a Notice of Intent to Deny the application. The district director noted that the record did not contain credible and verifiable evidence that the applicant continually resided in the United States since before January 1, 1982 through 1988. The director identified specific deficiencies in the evidence, such as the absence of rent receipts or utility bills to corroborate the apartment lease, and afforded the applicant thirty days to submit additional evidence in support of the application.¹

¹ The director also concluded that the applicant's failure to submit proof of correspondence or phone calls with his fiancée, or of her presence in the United States during the relevant period, suggested that the applicant was not residing in the United States as claimed. When the applicant failed to overcome this contention in his response to the NOID, the director based his denial in part on this lack of evidence.

In response, counsel for the applicant submitted a letter dated May 2, 2005, alleging that the evidence previously submitted, clearly established that the applicant had continually resided in the United States since before January 1, 1982 through May 4, 1988. Counsel submitted one additional affidavit by Dr. [REDACTED], dated May 2, 2005, attesting to the claims previously made in her letter dated September 10, 2003 and her billing records that she treated the applicant in 1986 and 1987. In conclusion, counsel challenged the basis for the director's conclusions that the evidence submitted was insufficient to establish the applicant's eligibility.

The director denied the application on June 23, 1985, noting again that the evidence in the record supported a was insufficient to show that the applicant was unlawfully present in the United States from before January 1, 1982, the beginning of the qualifying period, through May 4, 1988. Although the director noted the applicant's numerous affidavits of acquaintance and work letters as well as the apartment lease, the director noted there was no evidence of the applicant's entry prior to January 1, 1982 and insufficient evidence of his continued presence in the United States through 1988.

On appeal, counsel for the applicant asserts that the applicant satisfied his burden of proof by a preponderance of the evidence, and specifically alleges that the director failed to give appropriate weight to the affidavits and employment letters in the record. Upon review, the AAO concurs with the director's decision.

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-- M--*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E--M--* also stated that "[t]ruth is to be determined not by the quality of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421. (1987)(defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Although the applicant claims he entered the United States in January 1981, he likewise claims that he entered without inspection. As a result, there is no documentary evidence in the form of an arrival-departure record or stamped passport to verify the exact date of entry. The applicant provided a letter from Bonwit Teller, dated February 2, 1981 and entitled "Certificate," which claims the applicant had been employed for

There is no requirement that an applicant provide proof of correspondence with a spouse or fiancé(e) living abroad as evidence of his continuous unlawful presence in the United States, and the director's conclusions to this extent are erroneous. These comments, therefore, will be withdrawn.

the company for approximately one week. This letter, however, is insufficient to establish the applicant's unlawful presence in the United States. The document provided does not meet the regulatory requirements. Specifically, in lieu of employment records, CIS will accept an affidavit form-letter stating that the alien's employment records are unavailable and why they are unavailable, as well as the employer's willingness to come forward and give testimony as requested. See 8 C.F.R. § 245.a2(d)(3)(i)(F). The "certificate" of Mr. [REDACTED] does not state this information. On appeal, counsel contends that this letter is sufficient to establish the applicant's presence in the United States prior to January 1, 1982, since it was created in 1981 for an unknown purpose and not specifically for this application. However, even if the letter was in fact created in 1981, it does not provide the inclusive dates of the applicant's employment with the company nor does it state the origin of this information and whether it is taken from official company records. At best, it may support a finding that the applicant worked for this company for a week in January 1981, but fails to support a finding that he continually resided in an unlawful status in the United States from before January 1, 1982 to May 4, 1988.

Additionally, the affidavits from S.A. [REDACTED], both of which claim that they know the applicant began residing in the United States in 1981, are insufficient to establish the applicant entry into the country prior to January 1, 1982. Mr. [REDACTED]'s affidavit omits the address at which he knew the applicant during the relevant period, and although he claims to be the applicant's brother-in-law, he fails to state the basis for the information provided or the date he first met the applicant. Additionally, the affidavit of Mr. [REDACTED], who declines to provide his first name, claims he knew the applicant to reside on [REDACTED] from January 1, 1981 to October 30, 1983 because someone, either the affiant or the applicant, worked as a handyman at [REDACTED]. Since the applicant makes no claim to have worked for this employer, the relevance of this statement is unclear and somewhat confusing. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The applicant also relies on numerous other affidavits, as well as an employment letter from [REDACTED] in support of the claim that he unlawfully and continually resided in the United States during the relevant period. This employment letter, which claims that the applicant worked for the Garden Apartments Complex as a handyman since October 1983, was executed in December 1983. This letter, similar to the letter from [REDACTED] is likewise insufficient and fails to satisfy the regulatory requirements. As stated above, CIS will accept an affidavit form-letter stating that the alien's employment records are unavailable and why they are unavailable, as well as the employer's willingness to come forward and give testimony as requested. See 8 C.F.R. § 245.a2(d)(3)(i)(F). This letter, like that of Mr. [REDACTED] is not an affidavit and does not provide the inclusive dates of the applicant's employment with the company. Furthermore, it does not state the origin of the information and whether it is taken from official company records. At best, it may support a finding that the applicant worked for the Garden Apartments for two months in 1983, but fails to support a finding that he continually resided in an unlawful status in the United States from before January 1, 1982 to May 4, 1988.

As stated above, the inference to be drawn from the documentation provided shall depend on the extent of the documentation. Although numerous affidavits of acquaintance have been submitted, they lack sufficient detail and fail to provide a consistent overview of the applicant's presence in the United States during the relevant period.

While there is no specific regulation which governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements which affidavits from organizations are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information which an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to. See 8 C.F.R. § 245a.2(d)(3)(v).

While these standards are not to be rigidly applied, an application which is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on affidavits which are considerably lacking in such basic and necessary information.

The affidavits submitted in support of this application fall far short of meeting the above criteria. The affidavit of [REDACTED] claims that she knew the applicant in the United States since 1981, and specifically knew his to reside at [REDACTED], from November 15, 1985 to August 7, 1989. It should be noted that although the applicant lists this same address, including apartment 11B, as her residence, she makes no reference to this and does not claim that they resided together or knew each other at this address. Such an omission is curious, if not questionable. The letter from [REDACTED] who claims that applicant resided with her at this same address during these dates and that she still resides there, makes no reference to [REDACTED], who lists this same location as her present address. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N at 591. Most importantly, however is that these letters and affidavits contain minimal amounts of information regarding the applicant. These brief and somewhat generic statements fail to conform to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3).

Finally, the lease agreement submitted does not appear to be signed by the applicant. At best, the lease agreement would suggest that the applicant was present in the United States from November 1983 to November 1985, although the absence of monthly utility bills or rent payments makes it difficult to conclude that the applicant was continuously present during this entire period. The medical records provided by Dr. [REDACTED] as well as her affidavit and letter, show that, at best, the applicant was seen by her on four separate occasions from April 1986 to May 1987. The fact that the applicant visited the doctor four times during this period, absent other credible documentation or evidence, is simply insufficient to show that he was unlawfully residing and maintaining continuous physical presence during the relevant period.

Given the absence of contemporaneous documentation and the reliance on affidavits which do not meet basic standards of probative value, it is concluded that the applicant has failed to establish, by a

preponderance of evidence, that he continuously resided in the United States in an unlawful status since before January 1, 1982 through 1984. Therefore, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.