



U.S. Citizenship
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[Redacted]

FILE: MSC 03 098 61786

Office: DALLAS

Date: MAR 15 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:

[Redacted]

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 the matter 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, Dallas, 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 continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the applicant has submitted sufficient documentation to meet his burden of establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988.

An applicant for permanent resident status must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. 8 C.F.R. § 245a.11(b).

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).

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 quantity 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 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.

Although the 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. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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 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).

Here, the submitted evidence is not sufficiently relevant, probative, and/or credible to meet the applicant's burden of proof.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence throughout the application process:

- A letter dated January 28, 2005 from [REDACTED] of the St. James Catholic Church in Dallas, Texas stating that the applicant has been part of the parish community and resided at [REDACTED] since 1981.
- An affidavit notarized on January 22, 2005 from [REDACTED] stating that he and the applicant worked in the fields of [REDACTED] from November 1981 to May 1985.
- An affidavit notarized on December 19, 2005 from [REDACTED] stating that he knows the applicant since 1980 and used to live next door to him.
- An affidavit notarized on December 5, 2005 from [REDACTED] of Irving, Texas stating that he and the applicant have been friends since 1981.
- A letter dated May 14, 2004 from [REDACTED] stating that the applicant was employed as contract laborer on his farm from November 1981 to May 1986.
- A letter dated June 9, 2003 from [REDACTED] stating that the applicant was employed as a part-time laborer on his farm from 1981 to 1986.
- An affidavit notarized on November 11, 2002 from [REDACTED] stating that he has known the applicant as a friend since 1981 and knows that the applicant resided at [REDACTED] in Dallas, Texas since that time.

- An affidavit notarized on October 31, 2002 from [REDACTED] stating that she has known the applicant residing at [REDACTED] in Dallas, Texas since 1984.
- An affidavit notarized on October 16, 2002 from [REDACTED] stating that the applicant has been living at [REDACTED] in Dallas, Texas since he met him in or about January 1987.
- A letter dated September 9, 2002 from [REDACTED] President of Addison Place and Finish of Carrollton, Texas stating that the applicant has been an employee of the company since July 1986.
- An affidavit notarized on June 4, 2002 from [REDACTED] attesting that the applicant was employed on his farm as a contract laborer from November 1981 to May 1986.
- An affidavit notarized on May 28, 2002 from [REDACTED] stating that he has known the applicant as a resident of Dallas, Texas since 1982 to that date.
- An affidavit notarized on January 27, 1992 from [REDACTED] the applicant's sister, residing at [REDACTED] in Dallas, Texas attesting that the applicant had lived at that address from February 1986 to that date.
- An affidavit notarized on January 27, 1992 from [REDACTED] stating that as a friend he knows that applicant has resided at [REDACTED] in Dallas, Texas from February 1986 to that date.
- An undated handwritten letter from [REDACTED] stating that she has know the applicant since January 1982.

On May 3, 2004, the director issued a Notice of Intent to Deny (NOID) stating that the evidence submitted by the applicant was not credible because the applicant "provided a new work letter for 1981 through 1986, but his job was never listed on [the applicant's] original I-687 application."

In response to the NOID, the applicant submitted the May 14, 2004 letter from [REDACTED] stating that the applicant was employed as contract laborer in his fields from November 1981 to May 1986.

In the decision to deny the application dated December 1, 2004, the director acknowledged the additional letter from [REDACTED] but stated that [REDACTED] had been contacted and had provided direct testimony that undermined the credibility and probative value of the letters and affidavits submitted by the applicant. Specifically,

[REDACTED] made the statement that he did not directly remember most of the workers that had previously worked in his fields, and that he had written letters for people simply because he wanted to help them, even if they had not worked for him.

The director also noted that “all the work letters from 1987 through 1988 are conflicting as to which company [the applicant] worked for, and which city [the applicant] worked in.” The director determined that the applicant had thus failed to demonstrate that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the director failed to apply correctly the relevant legal standards for evaluating evidence. Counsel contends that the applicant has met his burden of proving by a preponderance of the evidence that he resided in the United States for the requisite periods. Counsel observes that the director did not state in his decision “whether or not [redacted] remembers [the applicant] working in his fields.” Counsel contends that “the fact that [redacted] met with the applicant in person and agreed to write three letters stating that he employed the applicant in the period in question should be sufficient to overcome the doubts” concerning the credibility of this evidence.

Upon review of all the evidence in the record, the AAO determines that the submitted evidence is not sufficiently relevant, probative, and credible to meet the applicant’s burden of proof.

The applicant has failed to explain adequately why he did not list his employment with [redacted] on his Form I-687 application. The only employment listed on the applicant’s Form I-687 is with the J.C. Construction Company in Houston, Texas from November 1987 to the date of the application, May 10, 1991. This undermines the statements of [redacted], President of Addison Place and Finish of Carrollton, Texas that the applicant worked at that company beginning in July 1986. The letters and affidavits from [redacted], combined with the record of a direct interview with Mr. [redacted] on April 24, 2004, at most indicate that [redacted] hired day laborers in his fields through a supervisor and that the applicant was a part-time laborer during the period from 1981 to 1986. However, the evidence does not show continuity of employment for the entire period. In light of the applicant’s omission of this employment from his Form I-687, the director did not err in determining that this evidence lacked credibility.

Furthermore, the only address listed under residences on the applicant’s Form I-687 is [redacted] in Houston, Texas, which undermines the testimony of third-party affiants that the applicant had resided in Dallas, Texas since 1981. Furthermore, of the affiants attesting to the applicant’s specific address at [redacted] in Dallas, Texas, two of them, the applicant’s sister, [redacted] and a friend, [redacted], state only that the applicant resided at that address beginning in 1986, rather than 1981 as indicated by the other affiants.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

The decision indicates that the director determined that the applicant had failed to submit independent objective evidence that adequately resolved the inconsistencies in the evidence submitted by the

applicant. As the applicant himself has submitted conflicting statements as to his residence and employment during the qualifying period, it is reasonable to expect him to explain why he has submitted contradictory information and adequately resolve the contradictions through credible evidence. Here, the evidence submitted by the applicant, along with the assertions of counsel, are not sufficient to resolve the several inconsistencies in the evidence. Furthermore, these discrepancies raise questions about the authenticity of the remaining documents the applicant has presented in attempt to continuous residence in the United States prior to January 1, 1982 through May 4, 1988.

The regulation at 8 C.F.R. § 245a.12(e) provides that “[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods.” Preponderance of the evidence is defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black’s Law Dictionary 1064 (5th ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

Given the discrepancies in the evidence submitted by the applicant, the AAO determines that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982, and resided in this country in an unlawful status continuously since that time through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b).

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