

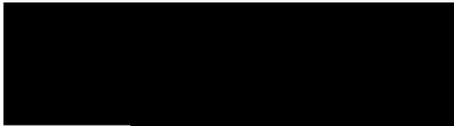


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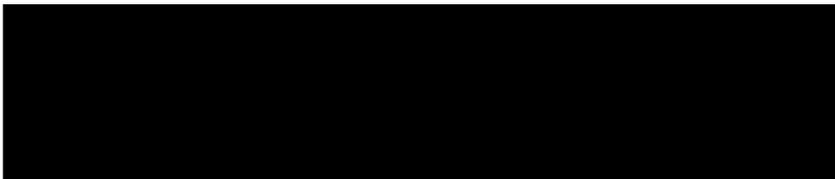
Office: LOS ANGELES

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:



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, Los Angeles, 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 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 statement dated July 14, 2003 from [REDACTED] of Moreno Valley, California attesting that he first met the applicant in Nigeria in the 1970s and saw the applicant for the first time in the United States on December 15, 1981 at the house of mutual friend. [REDACTED] states that he saw the applicant in the United States occasionally thereafter.
- A letter dated June 2, 2003 from [REDACTED] of the St. Athanasius Church in Long Beach, California indicating that the applicant has been a member of the church since 1981, and that his parish does not keep records for more than three years.
- An affidavit dated September 21, 1990 from [REDACTED] of Los Angeles, California attesting that the applicant resided with him at [REDACTED] in Los Angeles from August 16, 1981 to October 1983.
- An affidavit dated July 16, 1990 from [REDACTED] of Inglewood, California attesting that he attended church with the applicant and has personal knowledge that the applicant lived at [REDACTED] in Long Beach, California from June 1984 to November 1985; at [REDACTED] in Long Beach from December 1985 to September 1987; at [REDACTED] in Paramount, California from January 1988 to December 1989; and at [REDACTED] #1 in Signal Hill, California from January 1990 to the date of the affidavit. [REDACTED] states that he and the applicant became close and "started paying each other a visit."
- A "Road Test Score Sheet" from the State of California Department of Motor Vehicles dated February 9, 1988 and apparently containing the applicant's signature.
- 1988 W-2 Wage and Tax Statements for the applicant and his wife.

- The applicant's 1988 tax return unaccompanied by proof of filing.
- A copy of the applicant's passport and I-94 card indicating that the applicant was admitted to the United States in B-2 status on December 31, 1987.
- A receipt dated March 30, 1987 for "VCR Repair and Maintenance" bearing the applicant's name but no identifying information of the business issuing the receipt.
- A receipt dated May 11, 1986 from Chief Auto Parts bearing the applicant's name and address for the purchase of an alternator.
- A receipt dated November 2, 1985 indicating that the applicant paid rent for the month of November 1985 to an individual named "Thomas" in the amount \$450.
- A receipt dated July 11, 1983 for "deposit for clothing" bearing the applicant's name but no identifying information of the business issuing the receipt.
- A receipt dated March 11, 1983 for an "audio cassette" and "cleaning kit" bearing the applicant's name but no identifying information of the business issuing the receipt.
- A receipt dated October 5, 1982 for rent of \$400 received from the applicant for rent of [REDACTED] from November 1, 1982 to November 30, 1982.
- A receipt dated November 10, 1981 purportedly from Furniture Land bearing the applicant's name and address for the purchase of several items of furniture.
- A rental agreement dated November 10, 1981 apparently between the applicant and the Salvador Apartments for the lease of a property in Los Angeles, California for the monthly rent of \$675.
- An undated receipt from a Texaco service station with the applicant's name written in the top left corner and indicating the purchase of gasoline.
- An undated letter from [REDACTED] stating that she had known the applicant since they first met at religious services in November 1981, and they have seen each regularly since then.

On July 14, 2004, the director issued a Notice of Intent to Deny (NOID) stating that the declarations submitted by the applicant did "not contain corroborative documents in support of" the statements made therein. The director also found that the applicant had submitted receipts dated in the years 1981, 1982 and 1983 printed on forms not for sale until 1984.

In response to the NOID, the applicant submitted a statement dated October 27, 2004 in which he asserted that he informed the interviewing officer at the time of his interview that the disputed receipts

were not contemporaneous documents, but merely replacements of the original receipts. The applicant stated he obtained these replacements from stores "that could recall, or verify, my prior purchases." The applicant asserted that he made "immediate admission to [the interviewing officer] that these replacement receipts were not originals." The applicant submitted additional evidence with his response.

In the decision to deny the application dated November 2, 2004, the director stated that "the information [the applicant] submitted . . . failed to overcome all the grounds for denial as stated in the NOID," and denied the application.

On appeal, counsel asserts 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 contends that the director erred in summarily denying the application without providing specific reasons for the denial as required by 8 C.F.R. §103.3(a)(1)(i) and 8 C.F.R. § 245a.20(a)(2). Counsel also asserts that the decision "fails to comport with the Due Process clause under the 5th Amendment, dismissing out-of-hand [redacted] application without careful and due consideration of the underlying factual history of the claim." Counsel contends that, based on the lack of a stated record and the "immediate issuance of the Denial of [the applicant's] claim following his submission in response to the [NOID]," the applicant was deprived of a meaningful opportunity to be heard. Counsel observes that the director issued the decision merely one business day after receiving the applicant's response, a "clear indication that [the applicant's] response was not given careful and proper consideration." Counsel also contends that the director failed to recognize in the NOID the documentation submitted by the applicant to prove residency and incorrectly concluded that certain receipts submitted by applicant were fraudulent, thus disregarding the applicant's clear testimony that these receipts were "replacements" obtained years after the applicant purchased the goods or services indicated thereon.

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 AAO also finds that the director's decision contained sufficient specificity under the circumstances to satisfy regulatory requirements.

Contrary to counsel's assertions, the director provided in the NOID, and subsequently incorporated by reference in the decision, two specific reasons for denying the application:

1. The "declarations" submitted by the applicant "do not contain corroborative documents in support" of the statements made therein.
2. Certain receipts submitted by the applicant were printed on forms not in circulation until after the dates on which the receipts were purportedly issued.

The AAO turns initially to the first stated ground of denial: the declarations submitted by the applicant lack "corroborative documents in support" thereof. The affidavit from [redacted], which attests the applicant and [redacted] both resided at [redacted] in Los Angeles from August 16, 1981 to October 1983, is not supported by the rental agreement submitted by the applicant. This agreement does not contain

the name or signature of [REDACTED]. The rental agreement, which is dated nearly three months following the beginning of the applicant's occupancy of the residence, fails to list the address of the premises being rented. As such, it lacks probative value as evidence of the applicant's actual residence. Furthermore, the rental agreement indicates that the applicant was to pay a monthly rent of \$675, but the applicant also submitted a rental receipt for rent in the amount of \$400 apparently paid as rent for the same property in November 1982.

Among the third-party affidavits and letters submitted by the applicant, only the affidavit from [REDACTED] is sufficiently detailed to show that the origin of the information concerning the applicant's address listed therein is the affiant's first-hand knowledge. The affidavit from [REDACTED] in addition to listing 3449 Atlantic Avenue as the applicant's Long Beach, California address from June 1984 to November 1985 instead of [REDACTED] as listed on the applicant's Form I-687 application, lacks detail concerning the origin and basis of the applicant's personal knowledge that the applicant resided at *each* of the addresses listed therein for the periods indicated. Likewise, the letter from [REDACTED], which states that the "parish does not keep records for more than three years," fails to indicate the origin of the information to which [REDACTED] is attesting. [REDACTED] does not indicate that he has first-hand knowledge that the applicant attended the St. Athanasius Church in Long Beach, California since 1981. Neither the affidavit of [REDACTED] nor the letter from [REDACTED] is accompanied by documents that corroborate the statements made therein. Finally, the affidavit of [REDACTED] attests only to his occasional contact with the applicant at the residences of third parties and is thus not of significant probative value.

According to the applicant's Form I-687 application, from January 1, 1982 through May 4, 1988, the applicant was employed by four separate employers and resided at four separate addresses. Nevertheless, the applicant failed to submit any affidavits or other relevant, probative or credible evidence from his former employers or landlords to corroborate the claimed employment and residential history. Although it is possible for an applicant to prove residency through the submission of non-contemporaneous documents such as affidavits, the AAO concurs with the director that, in the particular circumstances of this case, such evidence as submitted by the applicant is not of sufficient probative value alone to meet the applicant's burden of proof.

The AAO now turns to the second ground of denial: certain receipts submitted by the applicant were printed on forms not in circulation until after the dates on which the receipts were purportedly issued. There is no evidence in the record, other than the applicant's own assertions in his October 27, 2004 declaration, showing that the applicant revealed at his interview on May 7, 2003 that certain receipts he submitted with his application were merely "replacements" rather than the original receipts issued at the time the goods or services in question were purchased by the applicant. In the October 27, 2004 declaration, the applicant failed to indicate the stores from which he obtained these receipts, or to submit any other evidence from these stores to corroborate his testimony.

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.

The AAO concurs and finds that the receipts submitted by the applicant are not relevant, probative and credible. None of the receipts submitted by the applicant indicate on their face that they are mere "replacement" receipts, and there is no evidence in the record showing that the applicant disclosed the true nature of these receipts at the time he submitted them as evidence of residency with his Form I-687 application. Furthermore, with the exception of the receipts from Chief Auto Parts and Texaco (which contains no date of issuance), none of the receipts submitted by the applicant contain the logo or letterhead of the entity or individual issuing the receipt. Most of the receipts lack any information from which the identity of the entity issuing the receipt can be ascertained. As such, they are not amenable to verification. Accordingly, the director did not err in determining that these receipts were not relevant, probative and credible evidence of residency. In response to the NOID, the applicant failed to submit independent objective evidence requiring the director to reconsider the assessment of this evidence previously provided in the NOID. Consequently, the AAO rejects counsel's contention that the application was not given serious consideration or that the applicant was deprived of constitutional rights in the adjudication thereof.

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 contradictory nature and general insufficiency of evidence, 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.