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U.S. Citizenship
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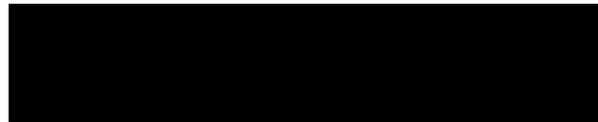
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IN RE: Applicant: [REDACTED]

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 since before January 1, 1982 through May 4, 1988. On appeal, counsel contends that the applicant has met his burden by a preponderance of the evidence, and submits new evidence in support of this contention.

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, the applicant stated that he first arrived in the United States on October 29, 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 October 15, 1990, the applicant claimed to live at the following address during the requisite period:

June 1982 to October 1988:

The applicant also claims to have lived at [REDACTED]s, Lake Placid, Florida 33852, from November 1981 to "present." Specifically, the applicant claims that he has seasonally worked in both Ohio and Florida as needed, and that he has spent approximately six months of all years at the relevant period at each location.

In an attempt to establish continuous unlawful residence in the United States since before January 1982 through 1988, the applicant furnished the following evidence with the initial application:

- (1) Affidavit dated October 15, 1990 from [REDACTED] brother of the applicant, claiming that the applicant worked with him under his social security number, at [REDACTED] and [REDACTED] from June through September from 1984 to 1989, as well as for [REDACTED] from October through April from 1984 to 1989. In addition, he claimed that he and the applicant worked together as lettuce blockers during "this entire period of years."
- (2) Affidavit dated October 15, 1990 from [REDACTED] a Supervisor of Labor for several farms. She claimed that the applicant worked for her as a lettuce blocker at [REDACTED] and [REDACTED] from June through September, and again for her at [REDACTED] from October through April. She claims that she first met the applicant in 1981, and that he began working for her under his brother's social security number in 1984.

- (3) Affidavit dated October 15, 1990 from [REDACTED], claiming that he has known the applicant since January 1982 and that the applicant currently resided at [REDACTED]. No additional information, such as the basis for the affiant's knowledge of the applicant, was provided.
- (4) Affidavit dated October 15, 1990 from [REDACTED] claiming that he has known the applicant in Lake Placid, Florida, from November 1981 through October 1990. He claims that he works at the store where the applicant buys food each week.
- (5) Affidavit dated October 15, 1990 from [REDACTED] who claims that she has known the applicant from November 1981 to October 1990 at [REDACTED] in Lake Placid, Florida, and claims that she knows this because they work at the same farm.
- (6) Affidavit dated October 10, 1990 from [REDACTED] who claims that he has known the applicant from November 1981 to present at [REDACTED]. He states that he has been the applicant's boss since 1984 but that he has known him since 1981.
- (7) Affidavit dated October 15, 1990 from [REDACTED] claiming that he has known the applicant since January of 1987 as a co-worker at [REDACTED].
- (8) Undated letter from [REDACTED] brother of the applicant, claiming that he came to the United States illegally in October 1981 and that the applicant crossed the border with him. He further claims that they lived together at Tope Farms and thereafter at [REDACTED], and that he supported the applicant until 1984. Finally, he claims that the applicant was using their brother [REDACTED] social security number to work.
- (9) Forms W-2 for 1985, 1986 and 1987 in the name of [REDACTED] in support of the contention that the applicant worked under his brother's number during this period.

On May 6, 2002, CIS issued a Request for Evidence, requesting the applicant to forward additional evidence in support of his eligibility. The applicant failed to provide any additional documentation, and CIS ultimately issued a Notice of Intent to Deny (NOID) the application on April 22, 2004, noting that the record contained only affidavits of acquaintances and no primary evidence. The NOID afforded the applicant an opportunity to supplement the record with proof of his unlawful status in the United States and his continuous physical presence in the United States from January 1, 1982 to May 4, 1988 and November 6, 1986 to May 4, 1988, respectively. Neither the applicant nor counsel responded.

The director denied the application on March 30, 2005, noting that there was insufficient evidence to show that the applicant entered and maintained continuous unlawful status in the United States from before January 1, 1982, the beginning of the qualifying period, through 1988, or that he had maintained continuous physical presence in the United States from November 6, 1986 through May 4, 1988. The director noted the numerous affidavits submitted, but stated that the affidavits alone were insufficient to establish the applicant's eligibility.

On appeal, counsel asserts that the denial was erroneous, and that the applicant has established by a preponderance of the evidence that he was eligible for the benefit sought. In support of this contention, counsel submits four new affidavits in support of the applicant's claims.

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 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.

The *Matter of E-- M--* decision provides guidance in assessing evidence of residence, particularly affidavits. In that case, the applicant had established eligibility by submitting (1) the original copy of his Arrival Departure Record (Form I 94), dated August 27, 1981; (2) his passport; (3) affidavits from third party individuals; and (4) an affidavit explaining why additional original documentation is unavailable.

Although the applicant claims he entered the United States in October 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. In support of his entry and his continuous unlawful presence in the United States from 1982 to 1988, the applicant relies on a letter from his brother, [REDACTED], as well as affidavits from various co-workers who attest to his presence in the United States in late 1981. However, these affidavits are minimal at best and fail to provide details regarding the basis of the affiants' knowledge of the applicant and the nature and extent of their relationship with him in the United States.

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. As discussed above, the affidavits provided are from co-workers or other residents of Tope Farms who attest to the applicant's presence there as of late 1981. However, there is minimal documentation regarding his other place of residence and claimed presence in Ohio during this period, and one affidavit from a labor supervisor claims she knew him at all three of his claimed jobs in two different states, which seems a bit questionable. Although the applicant claims that he worked under his brother's social security number as of 1984, and W-2 forms in the name of [REDACTED] are submitted for the record for the years 1985, 1986 and 1987, there is no evidence to definitely prove that the applicant did in fact work under his brother's number. The affidavit of [REDACTED] claims that he worked simultaneously with his brother during this period, thereby making it unclear as to how both brothers could work simultaneously using the same social security number. 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).

On appeal, counsel submits four newly-executed affidavits in support of the applicant's eligibility. The applicant, however, was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the application was adjudicated. The applicant failed to submit the requested evidence and now submits it on appeal. The AAO will not consider this evidence for any purpose. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

Based on the above information, the applicant's affidavits of acquaintance alone are insufficient to establish the applicant's unlawful status and continuous presence in the United States during the requisite 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 from January 1, 1982 through 1988. Therefore, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

It should be noted that the record reflects that on March 26, 1993, the applicant was arrested by the Glades County Sheriff's Department and subsequently charged with driving while intoxicated (DWI). On May 19, 1993, the applicant plead *nolo contendere* and was convicted of this misdemeanor offense in the Glades County Court (Court No. [REDACTED]). This single misdemeanor conviction does not render the applicant ineligible pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a). It is further noted that the record indicates the applicant was arrested on August 12, 1995 and on December 5, 1998. In a request for evidence, the director requested arrest reports and court dispositions, but the applicant failed to comply.

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