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U.S. Citizenship
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Services

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[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES

Date:

DEC 24 2008

MSC 03 231 60574

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. The file has been returned to the National Benefits Center. 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.

John F. Grissom, Acting Chief
Administrative Appeals Office

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

The director determined that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel asserts that the applicant has submitted sufficient evidence to establish his eligibility under the LIFE Act legalization. Counsel submits additional evidence on appeal.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

In the Notice of Intent to Deny (NOID), dated September 23, 2006, the director stated that the applicant failed to submit requested evidence pertaining to a removal order. Specifically, the director had requested that the applicant submit a Form I-690, Application for Waiver of Grounds of Inadmissibility because of a prior removal order that had been issued by an immigration judge. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated February 6, 2007, the director denied the instant application. The director stated the applicant had been provided Form I-72 (Request for Information) for the Form I-690, Application for Waiver of Grounds of Inadmissibility. The director further stated that the "document was received and reviewed, it is denied." As counsel stated, however, an immigration judge administratively closed the removal proceeding which had been reopened by the applicant's counsel's motion to reopen and to vacate the removal order, thereby precluding the need for a Form I-690. Accordingly, that portion of the director's decision is hereby withdrawn. The director also determined that the applicant had not submitted sufficient evidence to establish his continuous residence in the United States during the requisite period.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period. The applicant submitted letters of employment, and affidavits, as evidence to support his Form I-485 application. The AAO has reviewed the entire record. Here, the submitted evidence is not relevant, probative, and credible.

Employment Letters

The applicant submitted two letters of employment, from [REDACTED] of Valmec Trading, stating that the applicant had been employed from April 1987 to June 1989; and, from [REDACTED] owner of [REDACTED], stating that the applicant had been employed from March 11, 1985 through March 5, 1987.

It is noted however, that the letter from [REDACTED] failed to provide the applicant's address at the time of employment. Also the letters failed to show periods of layoff, declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are

unavailable as required under 8 C.F.R. § 245a.2(d)(3)(i). These letters, are therefore, not probative as they do not conform to the regulatory requirements.

Affidavits and letters

The record contains affidavits from [REDACTED] dated May 13, 1991 [REDACTED] and [REDACTED] attesting to knowing the applicant to have resided in the United States during the requisite period. Although the five affiants state that they met the applicant in 1981 or 1982, the statements do not supply enough details to lend credibility to a purported 9-year relationship with the applicant. For instance, the affiants do not indicate how frequently they had contact with the applicant, or how they had a personal knowledge of the applicant's presence in the United States. Given these deficiencies, these affidavits have minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

The record of proceedings also contains a second affidavit from [REDACTED] dated January 9, 1999, stating that the applicant, his brother, has lived and worked with him since the applicant arrived in the United States in June 1987. In that affidavit, the affiant also attests to knowing the applicant to have resided in the United States from June 15, 1987 to April 25, 1988. It is also noted that the applicant indicated on his Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents, Form EOIR 42B, and on his Form G-325A, which he submitted in support of the Form EOIR 42B, that he had resided in the United States since June 1987. These discrepancies contradict the applicant's claim that he has resided in the United States since prior to January 1, 1982.

The above discrepancies also cast doubt on whether any of the affidavits the applicant submitted to establish his continuous residence are genuine, and whether the applicant has been in the United States since November 1981, as he claims. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in his testimony and in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status during the requisite period.

The remaining evidence in the record does not pertain to the requisite period, and the additional documents, including the applicant's identity documents, do not establish the requisite continuous residence. The applicant has not submitted any additional evidence in support of his claim that he entered the United States prior to January 1, 1982, and he had resided continuously in the United States during the entire requisite period.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, he 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.