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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: HOUSTON

Date:

JUL 03 2008

MSC 02 064 61568

IN RE: Applicant:

[REDACTED]

APPLICATION:

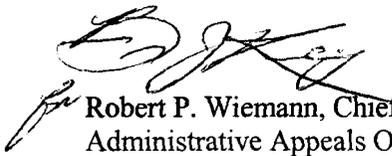
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), *amended by* LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

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.


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, Houston, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status from then through May 4, 1988.

On appeal, counsel for the applicant submits a brief.

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 states 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 petitioner 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.

On December 3, 2001, the applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status, under section 1104 of the LIFE Act. The applicant was interviewed in connection with his application on April 30, 2003. The applicant claimed to have entered the United States without inspection in January 1981, and to have departed the United States on only one occasion prior to May 4, 1988 – from December 1987 to January 1988 – in order to spend time with family in Mexico.¹

In a Notice of Intent to Deny (NOID), dated October 25, 2004, the district director determined that, due to notable inconsistencies and contradictions in the applicant's verbal testimony and the documentation submitted, he had failed to meet his burden of proof to establish that he first entered the United States before January 1, 1982, and had continuously resided in the United States in unlawful residence from prior to January 1, 1982, through May 4, 1988. The district director afforded the applicant 30 days to explain discrepancies in the record or rebut any adverse information. Counsel responded on November 23, 2004.

In a Notice of Decision (NOD), dated January 4, 2005, the district director determined that the information provided did not include sufficient evidence to rebut the NOID. Therefore, the district director denied the application based on the reasons stated in the NOID.

Counsel filed a timely appeal from the district director's decision on February 7, 2005. On appeal, counsel contends that the applicant has admitted to and clarified the inconsistencies in the documentary evidence, and that despite these inconsistencies, has provided evidence to prove his eligibility for adjustment of status under the LIFE Act. Counsel also asserts that the NOID and NOD do not indicate that Citizenship and Immigration Services (CIS) ever attempted to contact various affiants or verify the evidence provided, and has not proved that the supporting documentation is insufficient.

The issue in this proceeding is whether the applicant has furnished sufficient evidence to demonstrate that he entered the United States prior to January 1, 1982, and continuously resided in the United States in an unlawful status since January 1, 1982, through May 4, 1988.

The regulations at 8 C.F.R. § 245a.2(d)(3) provide an illustrative list of contemporaneous documents that an applicant may submit.

While affidavits "may" be accepted (as "other relevant documentation") [See 8 C.F.R. § 245a.2(d)(3)(vi)(L)] in support of the applicant's claim, the regulations do not suggest that such

¹ However, the record reflects that later, at an interview on September 5, 2005, the applicant stated he had also departed the United States to Mexico on an unspecified date in 1985 due to a family emergency involving his mother. He further stated that he was apprehended attempting to return to the United States without inspection and was returned to Mexico. He then returned unlawfully on an unspecified date – still in 1985.

evidence alone is necessarily sufficient to establish the applicant's unlawful continuous residence during the requisite time period.

A review of the record reflects that the applicant has provided sufficient documentation to establish his unlawful presence in the United States since in or about December 1984. However, there is insufficient evidence to establish that he continuously resided in the United States in an unlawful status before January 1, 1982, through November 1984. With regard to the time period prior to November 1984, the applicant provided the following documentation:

1. An affidavit, dated April 3, 1991, from [REDACTED] on which a date had been altered. At interview, the applicant stated that that [REDACTED] did not write or sign the letter – that it had been signed by him (the applicant).
2. An affidavit, dated September 30, 1991, from [REDACTED] stating that he had known the applicant since 1982. On October 31, 1991, [REDACTED] was telephonically contacted by CIS and stated that he had met the applicant about one year ago (in 1990) and did not know the applicant in 1982.
3. An affidavit, dated September 30, 1991, from [REDACTED], stating that he had known the applicant since 1981. On October 31, 1991, CIS telephonically contacted [REDACTED], affirmed the fact that he met the applicant at a bar in Houston, Texas, in 1981, but provided no other information regarding his knowledge of the applicant's unlawful residence and physical presence in the United States during the requisite period.
4. An affidavit, dated September 30, 1991, from [REDACTED], stating that the applicant had been his acquaintance since 1981. While not required, the affidavit is not accompanied by proof of identification or any evidence that the affiant actually resided in the United States during the relevant period. The affiant does not state how he dates his acquaintance with the applicant, how often and under what circumstances he had contact with the applicant during the requisite period, and lacks details that would lend credibility to his claims. It is unclear as to what basis the affiant claims to have direct and personal knowledge of the events and circumstances of the applicant's residence in the United States. As such, the statement can be afforded minimal weight as evidence of the applicant's residence and presence in the United States for the requisite period.
5. An affidavit, dated October 14, 1991, from [REDACTED] stating that the applicant had been his acquaintance since 1981. This affidavit, similar to No. 4, above, has the same insufficiencies.

6. An affidavit, dated September 30, 1991, from [REDACTED] stating that the applicant had been his acquaintance since 1981. This affidavit is similar to and suffers from the same insufficiencies as noted in Nos. 4 and 5, above.
7. A letter, dated November 7, 2001, from [REDACTED], stating that he and the applicant shared the same apartment from June 1982 to January 1984. This affidavit is similar to and suffers from the same insufficiencies as noted in Nos. 4, 5, and 6, above.
8. An affidavit, dated June 14, 2003, from [REDACTED], stating that he had been acquainted with the applicant in the United States since 1982, and that to the best of his knowledge, the applicant had never broken his continuous residence in the United States. Mr. [REDACTED] does not indicate how he dates his acquaintance with the applicant, how often and under what circumstances he had contact with the applicant during the requisite period, and lacks details that would lend credibility to his alleged 21-year relationship with the applicant. As such, the statement can be afforded minimal weight as evidence of the applicant's residence and presence in the United States for the requisite period.
9. An affidavit, dated June 9, 2003, from [REDACTED], stating that the applicant had been his acquaintance since 1981. This affidavit, similar to No. 8, above, has the same insufficiencies.

In summary, for the period prior to December 1984, the applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), and no hospital or medical records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv). The applicant also has not provided documentation (including, for example, money order receipts, passport entries, children's birth certificates, bank book transactions, letters of correspondence, a Social Security card, or automobile, contract, and insurance documentation) according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (I) and (K). The documentation provided by the applicant to establish his entry into the United States prior to January 1, 1982, consists solely of third-party affidavits ("other relevant documentation"), found to be not credible (Nos. 1 and 2., above) or insufficient (Nos. 3, 4, 5, 6, 7, 8, and 9).

Furthermore, there are discrepancies in the testimony provided by the applicant regarding his absences from the United States. At an interview in 2003, the applicant stated that he had only departed the United States once since his claimed initial entry in 1981 – for approximately one month - but in 2006, he stated that he had also departed the United States in 1985 for an unspecified period of time.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant'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. *Id.*

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification.

It is concluded that the applicant has failed to establish, by a preponderance of the evidence, that he entered the United States prior to January 1, 1982, and continuously resided in an unlawful status in the United States from before January 1, 1982, 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.