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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:

MSC 03 119 62464

Office: HOUSTON

Date:

JUL 11 2008

IN RE:

Applicant:

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to read "Robert P. 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, Houston, Texas, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The 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 asserts that the applicant has established by a preponderance of evidence that he resided continuously in the United States between January 1, 1982, and 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. Section 1104(c)(2)(B) of the LIFE Act; 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 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.

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).

On a form to determine class membership, which he signed under penalty of perjury on June 7, 1990, the applicant stated that he first arrived in the United States on June 10, 1981, when he crossed the border without inspection. The applicant, who was born on May 15, 1972, was approximately nine years old at the time. On his Form I-687, Application for Status as a Temporary Resident, which he also signed under penalty of perjury on June 6, 1990, the applicant stated that he lived at [REDACTED] in McKinney, Texas from September 1981 to December 1986, and at [REDACTED] in Livingston, Texas from

December 1986 to the date of his Form I-687 application. The applicant also stated that he did occasional seasonal yard work from 1986 to 1988, working either on his own or with contractors.

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

1. A copy of a January 19, 1990, statement from [REDACTED], in which she certified that she met the applicant's family in September 1981, when they came to live with her and her family. Ms. [REDACTED] stated the family paid half of the utility bills until they left on December 24, 1986. The applicant submitted no documentary evidence, such as utility bills or similar documentary evidence to corroborate that the family or [REDACTED] lived at the address during the stated time frame.
2. A copy of a January 20, 1990, statement from [REDACTED], in which he stated that he met the applicant's family on September 15, 1981. Mr. [REDACTED] stated that the applicant's family lived with the [REDACTED] family until December 24, 1984. He did not state the circumstances of his initial acquaintance with the applicant's family but stated that he is a close friend of the applicant's father.
3. A copy of a January 20, 1990, statement from [REDACTED] in which she stated that she had known the applicant's family since September 15, 1981. [REDACTED] stated that the family lived with the [REDACTED] family until December 24, 1984. [REDACTED] did not state the circumstances of her initial acquaintance with the applicant's family but stated that she became a close friend of the applicant's sisters.
4. A copy of a January 19, 1990, statement from [REDACTED], in which she stated that she had known the applicant's family since September 1981, when they moved in with the [REDACTED] family and she became friends with them.
5. A copy of a January 20, 1990, statement from [REDACTED] in which he stated that he had known the applicant's father since September 15, 1981, and that he met him through his stepdaughter [REDACTED]. He stated that the applicant's family lived with the [REDACTED] family until December 24, 1986.
6. A copy of a Texas application for car title and a Texas Transfer Registration Receipt dated November 23, 1983, issued to the applicant's father. The address for the applicant's father is listed as [REDACTED] in Plano, Texas. However, the applicant stated on his Form I-687 application that the family lived at [REDACTED] in McKinney, Texas from September 1981 to December 1986. The applicant does not allege that the family lived in Plano at any time during the qualifying period.
7. A copy of a December 9, 1983, car repair receipt for [REDACTED] at an address on [REDACTED] in McKinney, Texas.
8. Copies of money order receipts dated May 3, 1984, and August 11, 1986, showing the applicant's father as the payee with an address of [REDACTED] in McKinney, Texas. The applicant also submitted a copy of a money order receipt showing the payee as Grasiela Vega, the applicant's mother, also at [REDACTED]. The dates of these copies, however, are illegible.

9. A copy of a June 9, 1990, notarized statement from [REDACTED], in which he certified that [REDACTED] and his family” resided with him at [REDACTED] in Livingston, Texas” since January 1987.
10. A copy of a February 7, 1990, notarized statement from [REDACTED], in which he stated that the applicant’s father had been his employee since January 1987. Mr. [REDACTED] stated that the applicant and his family lived at [REDACTED] in Livingston, at the time of the father’s employment with him.

The applicant also submitted a copy of a notarized June 9, 1990, letter from [REDACTED], in which he verified that he hired [REDACTED] on February 1987 as a part-time housekeeper. Ms. [REDACTED] is apparently the applicant’s sister; however, this letter is not evidence of the applicant’s presence and residence in the United States during the requisite period. The applicant also submitted copies of PS Form 3806, Receipt for Registered Mail, showing the sender as the applicant’s mother. However, the postmarks on the receipts are illegible.

On August 8, 2005, the director requested that the applicant submit copies of all of his school records. In response, the applicant submitted an August 30, 2005, letter from the “Project Provide” Even Start Literacy Program in Diboll, Texas, stating that the applicant had been enrolled at the Diboll ISD Education Center and had reenrolled on August 22, 2005. In a Notice of Intent to Deny (NOID) dated February 16, 2005, the director advised the applicant that he had failed to submit evidence that he attended school from 1982 to 1988, and that his evidence failed to establish that he had entered the United States prior to January 1, 1982, and resided continuously in the United States through May 4, 1988.

In a March 16, 2006, response to the NOID, counsel stated that the applicant was submitting three affidavits from the [REDACTED] family, verifying that they had known the applicant since 1981 and that the applicant and his family moved into the [REDACTED] home. However, the affidavits were not included with counsel’s letter. Counsel argued further that, based on a February 13, 2003, memorandum from the Director of the Eastern District of the former Immigration and Naturalization Service (legacy INS, now CIS), the applicant’s failure “to submit evidence such as personnel data from record keeping, is not by itself a sufficient basis for finding the evidence is not credible,” and that if the applicant submitted affidavits that are credible and verifiable, “and there is no adverse information, the applicant shall be approved.” Although [REDACTED] alleged in her statement that the applicant and his siblings did not attend school for fear of deportation, neither counsel nor the applicant confirmed or denied that he had attended school in the United States.

Citing *Matter of Marquez*, 16 I&N Dec. 315 BIA 1977) and 8 C.F.R. § 103(b)(11), the director denied the application on March 30, 2006, finding that the applicant had failed to submit requested documentation, and that the evidence of record did not establish that the applicant had met his burden of proof under the LIFE Act.

On appeal, counsel submits the documentation omitted from the applicant’s response to the NOID, and again quoted the former director of the Eastern District of the legacy INS. The additional documentation consists of June 3, 2005, sworn statements from [REDACTED] and [REDACTED], in which each of them stated that he had known the applicant since 1981, when the applicant was living with their mother at [REDACTED] in McKinney, Texas. None indicated their ages or whether they lived at home with their mother at the time the applicant and his family lived with her. Therefore, it

cannot be determined from their statements if the information they provided is based on their own knowledge and memories or information that was provided to them. The applicant also submits a June 2, 2005, notarized statement from [REDACTED], in which he states that he met the applicant's family in 1981, when they moved into his father-in-law's home. Mr. [REDACTED] did not identify his father-in-law or the address at which the applicant lived in 1981.

The record contains two Forms G-325A, Biographic Information, signed under penalty of perjury by the applicant. On the first one, dated May 20, 1999, the applicant stated that he lived in Mexico until September 1982. On the second, dated December 2006, the applicant stated that he lived in Mexico until September 1981. 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).

The applicant submits no independent objective evidence to resolve these inconsistencies in the record. He failed to provide his 1982 through 1988 school records, without providing an explanation as to why these records were not available.

Two families, one with whom he allegedly lived, provide all of the statements attesting to the applicant's presence and residence in the United States. While affidavits can, in certain cases, meet the applicant's burden of proof, statements submitted by the applicant contain basically the same wording and are all from close friends. The applicant submits no legible, contemporaneous documentation to establish that he resided in the United States prior to 1983. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon documents with minimal probative value, his failure to provide requested documentation, and the unresolved issue of his residence in Mexico, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States during the 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.