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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

MSC 01 326 60379

Office: MIAMI

Date:

JUL 30 2008

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 District Director, Miami, Florida, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application, finding that the applicant failed to establish by credible evidence that he arrived in the United States prior to January 1, 1982, and resided continuously in the United States in an unlawful status from that date through May 4, 1988. The director found that the applicant had made conflicting claims and lacked the adequate documentary evidence.

On appeal, the applicant asserts that he first entered the United States on April 13, 1981. He asserts that he was 17 years old at the time and that [REDACTED] was president of the United States at that time. He asserts that he returned to Honduras twice, once in 1985 to marry his wife and another time in 1987 when his mother was critically ill. He asserts that if the documentary evidence he has already submitted is not sufficient to establish his eligibility, he will accept the decision, because this is all the proof he has.

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 or 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.

The record reflects that on August 22, 2001, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On November 16, 2004, the applicant appeared for an interview based on his application.

On June 29, 2006, the director sent the applicant a Notice of Intent to Deny (NOID) the application, finding that the applicant failed to establish by credible evidence that he arrived in the United States prior to January 1, 1982, and resided continuously in the United States in an unlawful status from that date through May 4, 1988. The director found that there were conflicting claims and a lack of documentary evidence. The director informed the applicant that he had 30 days from the receipt of the NOID to submit any information the applicant felt was relevant to his case. In response, the applicant submitted various previously submitted documents.

On July 19, 2006, the director denied the application, finding that the applicant failed to overcome the grounds for denial as stated in the NOID.

On appeal, the applicant asserts that he first entered the United States on April 13, 1981. He asserts that he was 17 years old at the time and that [REDACTED] was president of the United States at that time. He asserts that he returned to Honduras twice, once in 1985 to marry his wife and another time in 1987 when his mother was critically ill. He asserts that if the documentary evidence he has already submitted is not sufficient to establish his eligibility, he will accept the decision, because this is all the proof he has.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish his entry into the United States before January 1, 1982 and his continuous residence from January 1, 1982, through May 4, 1988.

The record of proceeding contains the following evidence relating to the requisite period:

Contemporaneous Evidence

- A form letter from M.Y. Medial Corp. and Surgical Center indicating that the applicant received care there from July 10, 1985, to August 1, 1985, as a result of being in an auto accident on July 10, 1985. The name of the treating physician and the date the form was signed are illegible;
- A form letter dated September 18, 1993, from M.Y. Medial Corp. and Surgical Center in Miami, Florida. The form indicates that the applicant was under the care of [REDACTED] from December 6, 1984, through September 17, 1993. The form indicates that the applicant was under [REDACTED]'s care during that time for "anemia, acute bronchitis, acute tonsillitis, digestive dyspepsia, and so on." The form is not notarized and does not indicate what dates the applicant was treated for which conditions and is not accompanied by any other medical records;
- Rent receipts dated from May 30, 1981, to November 30, 1981. The receipts are not accompanied by a letter from the landlord or a roommate or a lease;
- An illegible retail receipt for an unknown item dated December 17, 1981;
- Envelopes post-stamped May 18, 1981, November 18, 1981, February 10, 1982, and December 6, 1983, addressed to the applicant in Florida with a return address in Honduras. The address on these envelopes is consistent with the address listed on the applicant's Form I-687, Application for Status as a Temporary Resident, but can be given no evidentiary weight as the address, [REDACTED], could not be found or verified as a United States address; and,
- Internal Revenue Service (IRS) Forms 1040, Individual Income Tax Returns for the years 1986, 1987, 1988, and 1989. These forms can be given no weight as they are not accompanied by corroborating documentation, such as IRS Forms W-2, Wage and Tax Statements or certification of filing with the Federal, state or local government.

None of these documents can be given significant evidentiary weight. The medical form letters are vague, incomplete, and do not indicate where the applicant was living at the time of treatment. They state what the applicant was treated for but do not indicate what treatment he received and are not accompanied by any other medical records. The form signed by [REDACTED] on September 18, 1993, does not specify what dates the applicant was treated for which

conditions. The rent receipts only cover a seven month period in 1981 and are not accompanied by a letter from the applicant's landlord or roommate, or by a lease. The retail receipt is generally illegible, does not appear to contain the applicant's address, and is not probative of continuous residence during the requisite time period. The address on the envelopes submitted, [REDACTED] could not be found or verified as a United States address. Having examined each piece of evidence, both individually and within the context of the totality of the evidence, these documents are insufficient to establish the applicant's entry to the United States before January 1, 1982, and his continuous residence from before that date through May 4, 1988.

Employment Letters

A letter dated July 10, 2006, from [REDACTED] states that the applicant worked for her in May, June, July, August, September, October, November, December of 1981, as a handyman and housecleaner. She states that the applicant used to work for her on the weekends and that she paid him \$70 per week in cash. She states that he is an honest, punctual, and responsible person; and,

A letter dated April 18, 1991, from [REDACTED] states that the applicant worked for his company from April 1985, to July 11, 1985 and then came back to work for him on August 1, 1985, to August 1989. He states that the applicant's average salary was \$230 to \$280, and that he paid the applicant in cash.

These letters can be given little evidentiary weight. Specifically, the employers failed to provide the applicant's address at the time of his employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, [REDACTED] also failed to declare which records their information was taken from, to identify the location of such records, and to state whether such records are accessible, or in the alternative state the reason why such records are unavailable. The letters listed the applicant's positions but did not list his duties.

Other Letters and Affidavits

A letter dated July 7, 2006, from [REDACTED] states that he and the applicant worked together in "June, July, August, September, October, November, December of 1981, 1982, painting and cleaning for the [REDACTED] and Manolo Company." He states that they got paid \$200/\$250 per week in cash. He states that by the time he met the applicant, the applicant was 18 years old, and that he was a responsible young boy;

- A letter sworn to in July 2006, from [REDACTED]. In this letter, [REDACTED] states that he has known the applicant since May 19, 1981. He states that the applicant completed a Form I-687, Application for Status as Temporary Resident, in September 1986, on the same day he did. He states that the applicant was behind him in line. He states that saw the applicant three or four times a month continuously from 1981 to 1990, until his family came to the United States. He states that the applicant traveled to Honduras on July 12, 1985, to marry [REDACTED] and returned to the United States on July 31, 1985. He states that the applicant traveled to Honduras on November 14, 1987, to see his sick mother, and that [REDACTED] bought a one-way airline ticket on TACA. He states that the applicant came back on December 15, 1987, through the U.S. border. He states that the applicant did not receive an answer about the Form I-687 he filed and that the applicant thought that it was because he had traveled to Honduras twice. Mr. [REDACTED] states that his own application was granted and that is why the applicant applied again until he finally got his work permit. He states that then the applicant applied for and was granted Temporary Protected Status and also applied for adjustment of status under the LIFE Act;
- Five “Affidavit of Witness” forms sworn to on September 4, 1990, and signed by [REDACTED] and [REDACTED]. The form language indicates that the affiant has known and been acquainted with the applicant and has personal knowledge that the applicant has resided in the United States as follows: _____ from _____ to _____. The affiants all indicated that they had personal knowledge that the applicant had resided in Miami, Florida, from 1981 to present. The form allows the affiant to add a statement that he or she “is able to determine the date of the beginning of his or her acquaintance with the applicant in the United States from the following fact(s): _____.” All of the affiants added the same phrase: “I am his friend.”; and,
- An unnotarized letter dated September 23, 1995, from Father [REDACTED] Associate Pastor. Father Corces states that the applicant has been residing in the United States since April 1981. Father [REDACTED] states that he personally met the applicant in the parish of Corpus Christi Church in Miami, Florida when he was a seminarian and priest in the summer of 1987.

These letters and affidavits can be given little evidentiary weight as evidence of the applicant’s residence and presence in the United States for the requisite period as they are incomplete and not sufficiently detailed. These affidavits suggest that the applicant was in the United States for the requisite time period, but lack any details that would lend credibility to the statements. The affiants also fail to provide details regarding their claimed relationship with the applicant that would lend credibility to their statements. None of the affiants provide an exact date of when they met the applicant or specify how they can recall the date when they met the applicant. Thus, they can be given minimal weight as evidence of the applicant’s residence from 1981

through 1990. Regarding the applicant's claimed entry into the United States before January 1, 1982, there is no statement by anyone who claims to have personal knowledge of such entry. Although not required, none of the affidavits included any supporting documentation of the affiants' presence in the United States during the requisite period.

The record of proceedings contains various other documents, including several certificates of completion for courses ranging from asbestos abatement to lead construction dated from 1990 to 2004, a Florida driver's license issued on July 19, 1993, and a work identification card for Decon issued on May 25, 1990. This evidence refers to the applicant's physical presence after the requisite time period and does not address the applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have last entered the United States in 1981, near San Isidro, California, and to have resided for the duration of the requisite period in Florida. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has failed to do so.

Given the insufficient evidence provided, 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, resided in this country in an unlawful status continuously since that time through May 4, 1988, and maintained continuous physical presence in the United States during the period from November 6, 1986 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Thus, 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.