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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship and Immigration Services

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PUBLIC COPY

[Redacted]

FILE:

[Redacted]

MSC 02 218 62089

Office: HOUSTON

Date:

JUN 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.

for 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 through May 4, 1988, and because the applicant had failed to establish that he satisfied the “basic citizenship skills” required under section 1104(c)(2)(E) of the LIFE Act.

On appeal, counsel for the applicant states that the director erred in denying the application because the director misinterpreted the law and failed to give adequate weight to the evidence submitted. Counsel further asserts that the applicant submitted sufficient credible evidence to establish eligibility. Counsel does not submit 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 December 1, 2004, the director stated that the applicant failed to submit sufficient evidence demonstrating that he entered the United States before January 1, 1982, and his continuous unlawful residence and physical presence in the United States, during the requisite period. The director noted that the applicant submitted affidavits from family and from family friends, however the affidavits were not verifiable. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated March 6, 2006, the director denied the instant application based on the reasons stated in the NOID. The director noted that the applicant responded to the NOID but failed to submit sufficient evidence to establish continuous residence for the requisite period. The director also noted that two of the affiants contacted gave conflicting testimony about how they first became acquainted with the applicant, and one affiant gave conflicting information regarding the applicant's attendance at school.

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 an employment letter, affidavits, envelopes, and pay stubs as evidence to support his Form I-485 application. Here, the submitted evidence is not relevant, probative, and credible.

Employment Letter

The applicant submitted a handwritten employment letter from [REDACTED], sworn to on August 12, 1991, stating that the applicant had been employed part-time with her since 1981.

Pursuant to 8 C.F.R. § 245a.2(d)(3)(i), letters from employers should be on employer letterhead stationery. The letter of employment is not on original company letterhead stationery. In addition, the affiant failed to provide the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the affiant also failed to 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.

Affidavits

The applicant submitted the following:

- 1) Two affidavits from [REDACTED], sworn to on April 7, 2001, and on December 23, 2004, respectively. The affiant states in both affidavits that the applicant has been residing in the United States since December 1980. Mrs. [REDACTED] states in her April 7, 2001 affidavit that she and the applicant were roommates at the [REDACTED], and she saw the applicant on a bi-weekly basis. In her December 23, 2004 affidavit, the applicant states that her husband, [REDACTED]'s first brought the applicant to live with her family when he was about 14 years old, and that the applicant lived with them for about five or six years until he became the common law husband of their daughter, [REDACTED].
- 2) Two affidavits from [REDACTED]. In the first affidavit, dated April 7, 2001, Mr. [REDACTED] states that he first met the applicant in 1983, at [REDACTED]; and, in the second affidavit, sworn to on December 19, 2004, the affiant states that the applicant has been residing continuously in Houston, Texas, since 1980. Mr. [REDACTED] states further that in 1986 the applicant became the common law husband of his daughter, [REDACTED].
- 3) Two affidavits from [REDACTED], sworn to on April 7, 2001, and on December 10, 2004, respectively. In his April 7, 2001 affidavit, the affiant states that he first met the applicant at the [REDACTED] in 1983. However, in his December 10, 2004 affidavit, the affiant states that the applicant has been residing continuously in Houston, Texas, since December 1980 when he was 13 or 14 years old. Mr. [REDACTED] states further that in 2001, he gave the applicant another affidavit stating that he had been acquainted with him since 1983 "because it was only what he had requested," however, he knows that the applicant arrived in the United States in December 1980. The affiant also states that he has been in constant touch with the applicant who is the common law husband of his niece.
- 4) Two affidavits from [REDACTED]s, sworn to on April 7, 2001, and on December 10, 2004, respectively. In her April 7, 2001 affidavit, the affiant states that she first met the applicant through [REDACTED] in 1983. However, in her December 10, 2004 affidavit, the affiant states that the applicant has been residing continuously in Houston, Texas, since December 1980 when he was 13 or 14 years old. Mrs. [REDACTED] states further that in 2001, she gave the applicant another affidavit stating that she had been acquainted with him since 1983 "because it is only what he had requested," however, she knows that the applicant arrived in the United States in December 1980. The affiant also states that she has been in constant touch with the applicant who is the common law husband of her husband's niece.

- 5) Two affidavits from [REDACTED], sworn to on March 12, 2001, and on December 19, 2004, respectively. In the March 12, 2001 affidavit the affiant states that he has known the applicant to reside in the United States since December 1980, and they were "co-workers friends." In his December 19, 2004 affidavit, the affiant states that the applicant his brother's friend, and has been residing continuously in Houston, Texas, since 1980.

It is noted that the applicant submitted additional evidence, including mail envelopes addressed to the applicant in the United States, pay stubs under the name [REDACTED], and receipts. These documents, however, are all dated after 1986 and do not establish that the applicant resided in the United States from prior to January 1, 1982 and resided in a continuous unlawful status through May 4, 1988. It is noted that the paystubs are not probative because the applicant does not submit any documentation to explain the discrepancy in his name [REDACTED] and the name "[REDACTED]" on the pay stubs submitted. It cannot be determined from the evidence submitted that [REDACTED]" and [REDACTED]" are one and the same person.

The applicant has submitted questionable affidavits. [REDACTED] states in one affidavit that the applicant was her roommate, and in another affidavit she states that the applicant lived with her family as a teenage child. Three affiants, [REDACTED], and [REDACTED]

[REDACTED] provided conflicting affidavits in which they attest to having known the applicant in the United States in 1983, and later changed their testimony to state that they have known the applicant in the United States since December 1980. The only explanation offered for the discrepancy by the affiants is that they provided the information pertaining to 1983 at the request of the applicant. In his first affidavit [REDACTED] states that he and the applicant were "co-workers friends," however, in his second affidavit he describes the applicant as his brother's friend. These discrepancies in the affidavits cast doubt on whether the applicant was in the United States since prior to January 1, 1982 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). Given the applicant's reliance upon questionable letters and affidavits with minimal probative value, 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.

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.