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U.S. Citizenship
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Services

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FILE:

MSC 02 247 60140

Office: DALLAS

Date:

MAR 10 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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to 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, Dallas, 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 had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

On appeal, the applicant submits a letter and re-submits photocopies of documentation previously provided.

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 district 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).

While there is no specific regulation that governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements that affidavits are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information that an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to. *See* 8 C.F.R. § 245a.2(d)(3)(v).

Nevertheless, an affidavit not meeting all the foregoing requirements may still merit consideration as "any other relevant document" pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must be on employer letterhead stationery, if the employer has such stationery, and must include the following:

- (A) Alien's address at the time of employment;
- (B) Exact period of employment;
- (C) Periods of layoff;
- (D) Duties with the company;
- (E) Whether or not the information was taken from official company records; and
- (F) Where records are located and whether the Service may have access to the records.

The regulation further allows that if official company records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and explaining why such records are unavailable may be submitted in lieu of meeting the requirements at (E) and (F) above.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant has provided the following evidence throughout the application process:

1. An affidavit, dated August 19, 1991, from [REDACTED] Houston, Texas, stating that he had employed the applicant as a painter full-time (40 hours per week, at the rate of \$5.00 per hour, with no periods of lay-off) from September 1981 to

November 1988. [REDACTED] was contacted and was requested to locate any evidence to verify that claim but was unable to assist. Another affidavit from Mr. [REDACTED] dated March 14, 2005, reiterates the information supplied in the affidavit dated August 19, 1991, and also states that the applicant resided in Houston, Texas, but his actual residence is in Dallas, Texas.

2. Another affidavit, dated August 22, 1991, from [REDACTED] stating that the applicant lived with his family in Houston from May 1981 to November 1988.
3. A notarized form-letter affidavit, dated August 21, 1991, from [REDACTED] Houston, Texas, stating that he met the applicant through a close relative and has personal knowledge that the applicant resided in Houston since June 1982.
4. A notarized form-letter affidavit, dated August 22, 1991, from [REDACTED] Fort Worth, Texas, stating that he met the applicant in July 1981 and has personal knowledge that the applicant resided in Houston since 1981.
5. A notarized form-letter affidavit, dated August 26, 1991, from [REDACTED] Houston, Texas, stating that he met the applicant through a cousin of a friend and has personal knowledge that the applicant resided in Houston since December 1982.
6. A notarized form-letter affidavit, dated August 27, 1991, from [REDACTED] Houston, Texas, stating that he met the applicant through a next-door neighbor and has personal knowledge that the applicant resided in Houston since May 1984.
7. A notarized form-letter affidavit, dated August 29, 1991, from [REDACTED] Houston, Texas, stating that he met the applicant through a friend and has personal knowledge that the applicant resided in Houston since 1982.
8. A notarized form-letter affidavit, dated August 29, 1991, from [REDACTED] Houston, Texas, stating that he met the applicant through a next-door neighbor and has personal knowledge that the applicant resided in Houston since August 1981.
9. Two affidavits, dated May 9, 2002 and June 16, 2003, from [REDACTED] Fort Worth, Texas, stating that he met the applicant in 1981. [REDACTED] further states that he was in the home remodeling business and sometimes employed the applicant as a casual laborer and contract painter. [REDACTED] was contacted, and seemed uncertain as to the amount, kind, location or times of work.
10. Two letters - one dated April 10, 2002, and another, notarized, dated May 22, 2002 - from [REDACTED] of [REDACTED] Kaufman, Texas, stating that the applicant was employed from 1981 to 1991.

11. Two affidavits, dated April 15, 2002, and June 16, 2003, from [REDACTED] stating that he had known the applicant since 1981. [REDACTED] further states that the applicant worked for him as a sub-contractor in the remodeling business, and that the applicant lives in the Dallas area where he (the applicant) owns his own home.
12. An affidavit, dated May 15, 2002, from [REDACTED] Dallas, Texas, stating that he met the applicant in 1990 when they were co-workers at the same job.

On February 18, 2005, the district director issued a Notice of Intent to Deny (NOID), stating that the applicant had failed to provide credible and verifiable evidence of his presence in the United States during the required time period. Specifically, the director noted that the documentation submitted by the applicant indicated that he had worked in the Fort Worth, Kaufman, and Houston, Texas, areas during the same time-period - from 1981 through 1988.

The district director denied the application on July 19, 2005, after concluding that the applicant had failed to provide credible and verifiable evidence to establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date through May 4, 1988. Again, the district director noted discrepancies in the applicant's submissions regarding where he worked during the requisite time period.

On appeal, the applicant submits a letter asserting that he traveled from one work-place to the other, as needs arose, during the time period from 1981 to 1988. In support of the appeal, the applicant re-submits photocopies of documentation previously provided.

While not required, the affidavits provided (Nos. 2, through 8 and 12, above) are not accompanied by proof of identification or any evidence that the affiants actually resided in the United States for the relevant period; do not indicate how the affiants date their acquaintances with the applicant, or how often and under what circumstances they had contact with the applicant; and otherwise lack details that would lend credibility to their relationships with the applicant. It is unclear as to what basis the affiants claim to have direct and personal knowledge of the events and circumstances of the applicant's residence in the United States. As such, the statements can be afforded minimal weight as evidence of the applicant's residence and presence in the United States for the requisite period.

Similarly, the employment letters and affidavits from [REDACTED] (No. 1, above), [REDACTED] (No. 9), [REDACTED] (No. 10), and [REDACTED] (No. 11) fail to meet certain regulatory requirements, identified above, set forth under 8 C.F.R. § 245a.2(d)(3)(i) (i.e. they are not on official company letterhead, and fail to state whether the information was taken from official company records and where the records are located and whether CIS may have access to the records...). As such, they also carry little evidentiary weight.

Furthermore, [REDACTED] in Houston, Texas claims to have employed the applicant full-time from 1981 to 1991. At the same time, [REDACTED] in Dallas, Texas, [REDACTED] in Kaufman, Texas,

and [redacted] in Fort Worth, Texas, claim that the applicant was employed by each of them during that same time period. It is noted that the round-trip distance from Houston to these cities is approximately 478 miles (Dallas), 460 miles (Kaufman), 524 miles (Ft. Worth).

It is further noted that the applicant claims that he first entered the United States in May 1981, and that he only once departed since entry for a visit to family in Mexico in December 1987. However, when filing his Form I-485, Application to Register Permanent Residence or Adjust Status, on June 4, 2002, at Part I, the applicant indicated that he has children who were born in Mexico on March 5, 1981, February 20, 1983, August 29, 1984, September 15, 1989, and October 16, 1993.

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 visa petition. 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The regulation at 8 C.F.R. § 245a.12(e) provides that "[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods." Preponderance of the evidence is defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5th ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

Given the above-noted insufficiencies and discrepancies in the 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, and resided in this country in an unlawful status continuously since that time through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b).

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.