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FILE:

MSC 02 247 66325

Office: HARTFORD Date:

MAR 31 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. 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, Hartford, 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. The director specifically focused on the lack of evidence pertaining to the applicant's entry into the United States and his physical presence prior to January 1, 1982.

On appeal, counsel states that the applicant has established his eligibility by a preponderance of the evidence, and that the affidavits provided are sufficient to demonstrate his compliance with the regulations. Counsel requests reevaluation and reconsideration of the evidence in the record.

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).

In the affidavit for class membership, which he signed under penalty of perjury, the applicant stated that he first arrived in the United States on July 20, 1981, when he crossed the border without inspection. On his Form I-687, Application for Status as a Temporary Resident, which he also signed under penalty of perjury, the applicant again stated that he lived at the following addresses during the requisite period:

July 1981 to July 1985:

August 1985 to October 1989:

The AAO concurs with the director's finding that the applicant submitted insufficient evidence to establish his entry into the United States prior to January 1, 1982. The record contains an abundance of evidence pertaining to the applicant's presence in the United States in the later part of the requisite period, including tax returns and medical bills for 1986, 1987 and 1988, as well as an employment letter, various receipts and numerous affidavits attesting to his presence in the United States subsequent to 1985. However, evidence pertaining to his presence prior to January 1, 1982 and through the early years of the requisite period is quite sparse. The AAO, therefore, will focus on the period from before January 1, 1982 through 1984.

The applicant furnished the following evidence pertaining to his presence prior to 1985:

- (1) Notarized employment letter dated July 25, 1990 from _____ manager of _____ Auto Collision, stating that the applicant worked for the company from August 26, 1981 to November 1984. He also claimed that the applicant was an excellent worker.
- (2) Affidavit dated March 4, 1992 by _____, claiming that he met the applicant in _____ 1982 during a soccer game. He claimed to know the applicant resided at _____ Astoria, New York from July 1981 to July 1985.
- (3) Lease agreement dated July 30, 1981, signed by the applicant and pertaining to the premises located at _____. The AAO notes that the apartment number listed on the lease corresponds to the apartment number of the applicant's address at _____.
- (4) Affidavit dated March 1, 2004 by the applicant, claiming that he lived in "Estoria," New York when he arrived in the United States, and that he lived there from 1981 to 1984.
- (5) Affidavit dated March 1, 2004 by _____, owner of _____ Auto Collision and brother-in-law of the applicant, who claimed that he started the business in 1981 and that it closed in 1985. He claimed that the applicant began working for him in August 1981 through November 1984, and that he was paid in cash.

After the applicant's interview, a request for evidence was issued which asked the applicant to submit additional evidence in support of his claim of continuous unlawful residence in the United States since before January 1, 1982 through May 4, 1988. The documentation submitted by the applicant was still deemed insufficient to adequately establish his eligibility. Consequently, a notice of intent to deny was

issued on December 23, 2004, requesting more detailed evidence specifically showing that the applicant was present in the United States during the entry time required. In response, counsel for the petitioner submitted a three-page letter with no additional evidence, and claimed that the applicant was in fact present during the requisite periods as set forth by the regulations. Counsel claimed that the evidence contained in the record was sufficient to establish his eligibility by a preponderance of the evidence, and requested reconsideration of the proposed denial.

On February 27, 2007, the director denied the application, concluding that counsel's response to the notice of intent to deny was insufficient to overcome the stated basis for the denial set forth therein. On appeal, counsel again submits a lengthy argument based on the claim that the applicant has satisfied his burden of proof by a preponderance of the evidence.

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 since before January 1, 1982.

The first issue the AAO will address is the employment letter submitted by [REDACTED]. 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 letter dated July 25, 1990 from [REDACTED] of [REDACTED] Auto Collision failed to provide the applicant's address at the time of employment, show periods of layoff, 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 as required under 8 C.F.R. § 245a.2(d)(3)(i). Moreover, [REDACTED] is the brother of the applicant's wife, thereby raising questions regarding the exact nature of the claimed employment relationship between the parties. It is noted in the file that during the interview process, the applicant claimed that [REDACTED] and his wife were not related. However, [REDACTED]'s affidavit dated March 1, 2004 confirms that he is the applicant's brother-in-law. Doubt cast on any aspect of the petitioner'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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The applicant's inability to obtain an authentic letter of employment meeting the regulatory requirements for the period in question seriously detracts from the credibility of his claim of continuous unlawful residence during the requisite period. For the reasons set forth above, the letter from [REDACTED] claiming that the applicant worked for him from 1981 to 1984 and fails to meet the evidentiary requirements set forth in 8 C.F.R. § 245a.2(d)(3)(i) and, as such, will only carry minimum evidentiary weight in this proceeding.

In addition to the employment letter, the applicant submitted only three affidavits pertaining to the period from 1981 to 1984. There are numerous deficiencies in these affidavits. First, as indicated above, the

affidavit of [REDACTED], dated March 1, 2004, claims he is the applicant's brother-in-law. This statement directly contradicts the applicant's claim in his interview that [REDACTED] and his wife are not related. Moreover, the affiant repeats the dates of the applicant's alleged employment with his company which are not supported by employment records or other independent evidence.

The affidavit by [REDACTED] claims that the affiant met the applicant in 1982 during a soccer game. He claimed to know the applicant resided at [REDACTED] Astoria, New York from July 1981 to July 1985, and that they have been friends since they met. No additional information pertaining to the nature and frequency of their acquaintance, or the origin of the information to which he attests, has been provided.

The applicant's own affidavit dated March 1, 2004 is self-serving and is accompanied by no corroborating documentation. Despite the applicant's claim that he entered the United States in 1981 and lived in "Estoria" from 1981 to 1984, the lack of independent evidence to verify this claim renders it less than credible. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Although the applicant has submitted numerous affidavits in support of his application, the applicant has not provided any contemporaneous evidence of residence in the United States during the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period. None of the affiants indicated how they dated their acquaintance with the applicant or how frequently they saw the applicant. 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.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, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States during the requisite period.

Finally, the applicant submits an original lease agreement, dated July 30, 1981, for the lease of the property located at [REDACTED] in Astoria. This document is also not credible. The record contains numerous documents, such as the applicant's Form I-687 and [REDACTED]'s affidavit, both executed under penalty of perjury, which confirm that the applicant's address in the United States from July 1981 to July 1985 was at [REDACTED]. However, both of these documents claim that the unit in which the applicant resided was [REDACTED] not [REDACTED]. Moreover, it is noted that the applicant's apartment number at [REDACTED] where he resided from 1985 to 1989, is 1-L. It would appear, therefore, that the lease agreement was an unsuccessful forgery. As discussed previously, Doubt cast on any aspect of the petitioner'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. *Matter of Ho*, 19 I&N Dec. at 591. If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); see also *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery*

Shop, Inc. v. Nelson, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Finally, the AAO notes other unresolved discrepancies pertaining to the applicant's evidence. First, the applicant submits his marriage license, indicating that he married his wife, [REDACTED] on August 20, 1988. However, on the applicant's Forms 1040A, U.S. Individual Income Tax Return, for the years 1986 and 1987, he indicated that he and [REDACTED] were filing a joint return as a married couple. In addition, a Southern New England Telephone Bill dated November 25, 1987 is addressed to [REDACTED] the applicant's alias, at [REDACTED], Stamford, CT. However, throughout the record the documentary evidence indicates, and the applicant likewise claimed under oath, that he resided at [REDACTED] at that time. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

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 the requisite period. While the record contains an abundance of evidence, including tax returns, tax documents, and medical records which pertain to the period from 1985 through May 4, 1988, the many unresolved inconsistencies and contradictions in the evidence render it impossible to find that the applicant has met the requirements 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.