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FILE:

MSC 02 246 63814

Office: DALLAS

Date:

MAY 05 2008

IN RE: Applicant:

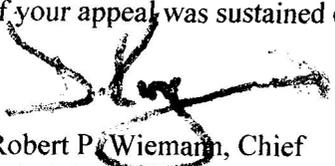
APPLICATION:

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 [or Records] 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.

  
Robert P. Wieman, 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, 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.

On appeal, counsel asserts that the applicant submitted sufficient proof to establish his claim, specifically original postmarked envelopes and lease agreements. Counsel, on behalf of the applicant, attempts to reconcile discrepancies 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).

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 on January 22, 2004, the director stated that the applicant failed to submit credible evidence demonstrating his continuous unlawful residence in the United States during the requisite period. The director noted that the applicant previously submitted an altered birth certificate and unverifiable employment letters. The director granted the applicant thirty (30) days to submit additional evidence. In response, the applicant provided previously submitted evidence. In the Notice of Decision, dated on September 7, 2005, the director determined that the evidence contained discrepancies with the applicant's Form I-687, Application for Temporary Resident Status pursuant to Section 245A of the Immigration and Nationality Act, and the address on the applicant's letters and lease agreements. The director denied the instant applicant due to a lack of credible and verifiable evidence.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered the United States before January 1, 1982, and continuously resided in an unlawful status in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status pursuant to Section 245A of the Immigration and Nationality Act on August 1, 1990. In his Form I-687, the applicant stated that he last entered the United States in December 1981. The applicant affirmed this date of entry in his Form for Determination of Class Membership, dated August 1, 1990, in which he stated that he first entered the United States in December 1981. In his Form I-687, at Question # 33, where the applicant was asked to list all of his residences in the United States since his first entry, the applicant stated the following addresses:

- a. From December 1981 to March 1983 at [REDACTED] Dallas, Texas 75223
- b. From April 1983 to July 1989 at [REDACTED] Dallas, Texas 75219
- c. From August 1989 to the present at [REDACTED] Dallas, Texas 75235

While the applicant's Form I-687 is evidence to be considered in determining eligibility, the Form I-687 cannot by itself be sufficient to establish eligibility. To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6).

The record contains only one piece of evidence to establish the applicant's entry into the United States before January 1, 1982. The record includes an original envelope addressed to the applicant at [REDACTED], in Dallas, Texas, postmarked on July 3, 1981. This piece of evidence is significant as it is entirely inconsistent with the applicant's own testimony. In his Form I-687, the applicant never listed this address as a place of residence. In addition, the envelope is postmarked over four months prior to when the applicant claimed he first entered the United States. These inconsistencies seriously detract from the credibility of the applicant. The record does not contain any other contemporaneous evidence to support the applicant's claimed entry into the United States before January 1, 1982.

On appeal, counsel contends that the applicant never reviewed his addresses contained on his Form I-687. Counsel asserts a generalization that Form I-687s were filled-out by notary publics who never had any legal training and were only interested in collecting fees and moving on to the next client. Counsel contends that notary publics would simply write whatever addresses stated by the client. Counsel attaches an affidavit by the applicant, who stated that at the time he did not read or write English and did not review the information. In his affidavit, the applicant stated that the addresses on the letters are correct. While counsel, on behalf of the applicant, attempts to reconcile the fact that his addresses of residence are inconsistent, counsel does not reconcile the fact that the applicant stated on two different forms an entry date of December 1981, and then submitted a postmarked envelope dated in July 1981. Even if counsel's assertions are taken at face value, counsel did not submit any independent, objective evidence to substantiate his assertions or point to where the truth lies. The applicant's own affidavit is not sufficient independent evidence. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In support of the applicant's continuous unlawful residence in the United States during the statutory period, the applicant submitted several letters of correspondence with postmarked envelopes between himself and his mother in Mexico. The letters and post-marked envelopes, addressed to or by the applicant, are dated during the statutory period. The AAO notes that the addresses on the envelopes are not only inconsistent with the applicant's Form I-687, but also with each other. The record contains a November 16, 1982, letter with attached envelope (postmark illegible) sent by the applicant. The applicant wrote his return address was [REDACTED], Baldwin, Maryland 21013. The record contains another envelope postmarked on August 5, 1982. This envelope indicates the applicant resided at [REDACTED], in Dallas, Texas. Both of these addresses are inconsistent with the applicant's Form I-687, which indicated he resided at [REDACTED] in Dallas, Texas, from December 1981 to March 1983.

The record contains the applicant's birth certificate. The director noted that the applicant's year of birth had been altered to be five years prior to the applicant's actual year of birth. On appeal, counsel asserted that, during his interview, the applicant pointed out the alteration and provided an

explanation. Counsel asserted that the applicant did not intend to defraud and, in fact, provided a copy of his genuine Mexican birth certificate with an unaltered date. The AAO finds that the applicant's altered birth certificate provides minimal probative value with regard to the applicant's claim since his genuine unaltered birth certificate was also presented.

The record contains a June 5, 1985, letter with attached envelope (postmark illegible) sent by the applicant. The applicant wrote his return address was [REDACTED], Baldwin, Maryland 21013. The record contains another letter, dated July 5, 1985, with an attached envelope (postmark illegible) sent by the applicant. The applicant wrote his return address was [REDACTED] Dallas, Texas 75235. Both of these addresses, which are a month apart in 1985, are inconsistent with each other and with the applicant's Form I-687. In his Form I-687, the applicant stated he resided at [REDACTED], in Dallas, Texas, from April 1983 to July 1989.

The record contains an April 19, 1984, letter with attached envelope (postmark illegible) sent to the applicant at Mineola, Texas 75773. This envelope is inconsistent with the applicant's Form I-687, in which he stated that he resided at [REDACTED] in Dallas, Texas, from April 1983 to July 1989.

The record also contains photocopies of two apartment lease agreements, dated December 15, 1982 and December 1, 1983. The apartment address was [REDACTED], Dallas, Texas 75219. The applicant is listed as resident in the lease agreements. However, it is noted that the applicant did not sign the agreement even though it states that all residents are required to sign the agreement. It is further noted that the apartment address is inconsistent with the applicant's Form I-687, in which he stated he resided at [REDACTED] in Dallas, Texas, from December 1981 to March 1983.

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 record contains no independent objective evidence to explain the above inconsistencies.

A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9<sup>th</sup> Cir., 2003). However, anytime an application includes numerous errors and discrepancies, and the applicant fails to resolve those errors and discrepancies after CIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the applicant's assertions. Here, the applicant was given an opportunity to resolve the inconsistencies regarding his addresses of residence and failed to do so.

The record also contains two virtually identical affidavits by [REDACTED] and [REDACTED] both dated on August 3, 1990. Both affiants stated that that the applicant resided at [REDACTED] Dallas, Texas 75235. Mr. [REDACTED] stated that he has known the applicant for 7 years. Mr. [REDACTED] stated that he has known the applicant for 9 years. Both affiants stated that the applicant was

a friend and provided their addresses of residence. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States. None of the affiants indicated how they dated their acquaintance with the applicant, how they met the applicant or how frequently they saw the applicant.

The record also includes two affidavits by \_\_\_\_\_ and \_\_\_\_\_, dated August 1, 1990. Ms. \_\_\_\_\_ owner of La Bodega Restaurant, stated that the applicant was employed as a bartender from January 1986 to July 1988. Mr. \_\_\_\_\_ ex-manager at Las Tortugas Restaurant, stated that the applicant assisted him in the kitchen from January 1982 to December 1985. Neither affidavit provided the applicant's address at the time of employment, 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 the regulation at 8 C.F.R. § 245a.2(d)(3)(i). The lack of details detracts from the credibility of the affiant.

Although the applicant has submitted various types of evidence in support of his application, the applicant has not provided sufficient credible evidence of entry into the United States before January 1, 1982, and continuous unlawful residence in the United States during the duration of the requisite period. The evidence must be evaluated not by the quantity of evidence alone but by its quality. As discussed above, the evidence contains numerous discrepancies which raise serious concerns about the veracity of the applicant's assertions and detract from his credibility. 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 numerous discrepancies, it is concluded that he has failed to meet his burden.

Beyond the decision of the director, the AAO notes that the record reflects that the applicant was arrested on October 5, 1991, for *unlawful carrying of weapon* in violation of section 46.02 of the Texas Penal Code (Case \_\_\_\_\_ in the County Criminal Court of Dallas County, Texas. The record indicates that the applicant failed to appear for trial and the judge ordered bond forfeiture on November 5, 1991. The case was dismissed on September 26, 1994, in the County Criminal Court of Appeals No. 2, in Dallas County, Texas.

Therefore, based on the above discussion, 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.