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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: NEW YORK Date: NOV 20 2008  
MSC 02 240 62775

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits 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.

  
John F. Grisson, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The 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, counsel argues that the applicant has submitted sufficient documentation to meet his burden of proof.

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. Section 1104(c)(2)(B)(i) of the LIFE Act; 8 C.F.R. § 245a.11(b).

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.

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. Here, the applicant has failed to meet this burden.

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

- A receipt dated December 20, 1981, from [REDACTED] in Houston, Texas. The receipt is for an item totaling \$102.60 (\$95.00 plus \$7.60 for tax).
- A receipt from Motel 6 for October 1, 1982 to October 3, 1982.
- A medical receipt dated November 25, 1983 from [REDACTED], a medical doctor in Houston, Texas.
- A letter dated November 28, 1988, from the manager of [REDACTED]'s Liquor in Houston, Texas, who indicated that the applicant was employed as a stocker/casual laborer from June 1986 to November 1988.
- A letter dated October 26, 1986, from [REDACTED], administrative assistant of Kennel Premium Services, Inc. in Houston, Texas, who indicated that the applicant was employed as a mailroom manager from January 1982 to October 1986.
- A notarized affidavit from [REDACTED] of Houston, Texas, who indicated she has known the applicant since August 1981 and that "most of the time he was living with me as a roommate and he was working with me as a helping hand in Landscaping Lawn Mowing and Cutting as casual labor."
- A notarized affidavit from [REDACTED] of Houston, Texas, who indicated that she has known the applicant since August 1981, and that "he is working with me, as a helper. I used to do apartment building cleaning."
- Two envelopes postmarked April 6, 1982 and August 29, 1983 addressed to Houston, Texas residences at [REDACTED] and [REDACTED].

The applicant also submitted several receipts that have no probative value as the applicant's name was not listed.

On February 14, 2007, the director issued a Notice of Intent to Deny, which advised the applicant that he presented no evidence of his entry into Mexico and the United States in 1981 and that no telephone numbers were listed for verification of information on the affidavits from [REDACTED] and [REDACTED]. The applicant was also advised that an attempt was made to contact [REDACTED] through the telephone operator; however, "this company is not known and no telephone number was listed on the affidavit." The telephone operator also indicated that the telephone number listed on the affidavit from [REDACTED] was not for the Houston area. Regarding the receipt from [REDACTED] the applicant was advised that according to Houston City Hall, the tax would have been \$4.00 in 1981. The director determined that the applicant's testimony was not credible and the affidavits appeared to be fraudulent.

The director also noted the applicant's June 1987 absence to Canada and indicated, "Mexico is close why did you go to Canada if no friends or relatives resides there." The director's statement will be withdrawn as the location of the applicant's absence from the United States is immaterial.

Counsel, in response, asserted that it is not possible to substantiate an entry which was without inspection and the applicant did not preserve proof of his entry into Mexico due to the passage of time. Counsel asserted

that the failure of [REDACTED] and [REDACTED] to provide their telephone numbers did not invalidate the affidavits. Regarding the telephone number of [REDACTED], counsel indicated, "Houston's area code in 1983 was 713 but nowadays is 281." Regarding the receipt from [REDACTED], counsel indicated, in pertinent part:

As to overtax, no wonder the hand written receipt by the vendor might had overcharged the tax. The receipt is not from a cash register that automatically writes the correct sales tax (if properly fed into cash register). No doubt the new arrivals who appear to be strangers or new arrivals into the USA are usually victims of overcharge by the vendors.

The director, in denying the application, considered counsel's statements and determined that the burden of proof is upon the applicant and the evidence submitted was not verifiable and lacked probative value.

Citizenship and Immigration Services (CIS) has determined that affidavits from third party individuals may be considered as evidence of continuous residence. *See Matter of E-- M--*, supra. In ascertaining the evidentiary weight of such affidavits, CIS must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E-- M--*, supra, the affidavits would not necessarily be fatal to the applicant's claim, if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony provided. The statements issued by counsel have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through May 4, 1988.

The AAO concur with counsel's finding that in 1983 the area code in the Houston area was 713. However, this medical receipt only serves to establish that the applicant was seen on November 25, 1983 by [REDACTED]. The receipt does not establish continuous residence.

The employment letters from [REDACTED] Liquor and [REDACTED], failed to include 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 affiants 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.

[REDACTED] indicated that she has known the applicant since 1981, but failed to provide the applicant's place of residence and the time period the applicant was in her employ. [REDACTED] indicated that the applicant resided with her "most of the time," but failed to specify the time period this residence occurred. In addition, the applicant failed to provide evidence that he or the affiant resided at [REDACTED] during the requisite period.

The motel 6 receipt raises questions to its authenticity as it was dated October 31, 1982; however, the form was published in July 1989. Furthermore, the address listed on the receipt does not correspond with the address the applicant claimed to have resided on his Form I-687 application.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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 (BIA 1988).

The evaluation of the applicant's claim is a factor on both the quality and quantity of the evidence provided. While affidavits in certain cases can effectively meet the preponderance of evidence standard, the affidavits submitted by the applicant are lacking in probative value and evidentiary weight and, therefore, 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 from before January 1, 1982, through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

Finally, the record reflects that on August 30, 1994, the applicant was convicted in the Santa Monica Municipal Court in Los Angeles County for inflicting corporal injury upon a spouse, a violation of section 273.5(a) PC, a misdemeanor. While this conviction does not render the applicant ineligible pursuant to 8 C.F.R. §§ 245a.11(d)(1) and 18(a), the AAO notes that the applicant does have a misdemeanor conviction.

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