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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEW YORK

Date: OCT 15 2008

MSC 02 145 60410

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 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, finding that the applicant had not met his burden of proof and was, therefore not eligible to register as a permanent resident under Section 1104(C)(2)(B) of the Legal Immigration Family Equity (LIFE).

On appeal, counsel for the applicant submits the applicant's sworn statement declaring that the applicant did not receive a copy of the July 11, 2006 Notice of Intent to Deny (NOID) the application. The record contains evidence that the NOID was mailed to the applicant at his correct address certified receipt requested and was returned unclaimed. Counsel also notes that he did not receive a copy of the NOID as the NOID was mailed to his previous address and that Citizenship and Immigration Services (CIS) had knowledge of his current address. Counsel resubmits documentation previously submitted.

Preliminarily, the AAO observes that the director mailed the NOID and the August 16, 2006 Notice of Decision, to the address the applicant confirmed as his correct address on the Form I-485 at the time of his June 24, 2004 interview. The applicant's failure to claim or accept certified mail from CIS is not excused. In addition, both counsel and the applicant had the opportunity to add to the record on appeal. The AAO reviewed the record in its entirety before issuing this decision.

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.

"Continuous unlawful residence" is defined at 8 C.F.R. § 245a.15(c)(1), as follows: An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.

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 applicant submitted the Form I-485 that is the subject of this appeal on February 22, 2002. He was interviewed by an immigration officer on June 24, 2004. The applicant testified: that he entered the United States in September 1981; that he lived with a friend at [REDACTED], New York, New York from 1981 to 1985; that he lived at [REDACTED], Bronx, New York from 1985 to 1988; and that he left the United States on May 15, 1987 to travel to Ecuador and returned to the United States on June 15, 1987. The record also contains information submitted to demonstrate the applicant's residence in the United States during the requisite time period. The AAO reviews only those documents pertinent to the applicant's residence from January 1, 1982 to May 4, 1988.

The record includes:

- An April 15, 1981 form letter on the letterhead of [REDACTED] of Copiague, New York that includes the applicant's name and a statement indicating that rent should be mailed to the letterhead address as well as a statement informing the tenant that a certain individual would no longer be the superintendent. The form letter does not disclose the address of the rental premises.
- A photocopy of a November 5, 1981 form letter from a landlord that includes the applicant's name but that does not include an address for the rental premises or other identifying information.
- A March 29, 1992 affidavit signed by [REDACTED] of New York, New York who declares that the applicant lived with him at [REDACTED], New York, New York from December 1981 to February 1985; a second March 29, 1992 letter (not notarized) signed by [REDACTED] of New York, New York who certifies that the

applicant lived with him at [REDACTED] from December 1980 to February 1985.

- A September 7, 2006 affidavit signed by [REDACTED] who declares that she has known the applicant since 1982.
- A photocopy of a December 17, 1981 letter on the letterhead of [REDACTED] Iron Works, Inc. signed by [REDACTED], president of [REDACTED] Iron Works, Inc., who states that the applicant has been in his employ from 1981 as a welder.¹ The letter lists the details of the applicant's employment. The letter is addressed to the Catholic Migration and Refugee Office.
- A photocopy of a February 5, 1982 letter, not on letterhead, but identifying the company as [REDACTED] Iron Works, Inc., addressed to the Department of Labor Employment (DOL) and Training Administration, informing the DOL that the applicant met their requirements for a welding position. The photocopy does not include the complete signature of the letter-writer.
- A March 30, 1992 affidavit signed by [REDACTED], president of [REDACTED] Iron Works, Inc. who declares: that the applicant started working for the company in October 1981; a second letter signed by [REDACTED] with a notary's jurat indicating the letter was signed in January 1993, but that does not contain the notary's signature, wherein the declarant indicates that he knows all his employees, that he knows the applicant has been an employee of his company, [REDACTED] Iron Works, since October 1981, and that there is a notation in the applicant's employee records that shows the applicant took emergency leave from May 14, 1987 to June 17, 1987; and a third letter signed by [REDACTED] president of Newco Iron Works, Inc. in Brooklyn, New York with a notary's jurat indicating the letter was signed on September 25, 2001, but that does not contain the notary's signature, wherein the declarant indicates that he knows all his employees, that the applicant is an employee of the company, and has been employed since June 1, 1993.
- A March 25, 1992 affidavit signed by [REDACTED] who states: that he has been a foreman for the past fifteen years; and that the applicant was employed by [REDACTED] Iron Works under his supervision since 1981.
- An April 1992 affidavit signed by [REDACTED], residing in Jackson Heights, New York who declares that she has known the applicant since 1981 until the present time.
- A copy of the declaration page of a life insurance policy with Prudential dated October 17, 1987 showing the applicant as the insured.
- An undated letter on the letterhead of Our Lady of Mercy Rectory, Bronx, New York, signed by Reverend [REDACTED], who states: that he worked as an associate pastor at St. Margaret Mary parish in the Bronx, New York from 1980 to 1989; that he came to know the applicant during that time; and that he gave religious instruction to the applicant during 1987 and 1988.

¹ The record includes an Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, issued to the applicant by [REDACTED] Ironworks, Inc. in 1989. The record does not include Forms W-2 issued prior to the 1989 year.

- A June 1, 1992 letter written on the letterhead of St. Martin of Tours in Brooklyn, New York wherein the Reverend [REDACTED] states that the applicant has attended services at the church since 1988.
- A June 7, 1990 letter signed by the program administrator of the Solidaridad Humana Comprehensive Learning Center indicating that the applicant was registered in an adult education program from January 4, 1988 to April 16, 1989.
- An October 24, 1987 layaway receipt issued to the applicant.²
- A January 10, 1988 receipt issued to the applicant.
- A March 7, 1988 service parts order issued to the applicant.

The record also includes several envelopes addressed to the applicant that do not show a discernable postmark but bear date stamps that are not imbedded in the postmark with the dates of: June 16, 1981, February 18, 1982, March 16, 1983, May 2, 1983, December 19, 1984, October, 18, 1985, July 30, 1986, and August 2, 1988.³

The applicant testified under oath that he first entered the United States in September 1981. However, he also submitted documents that suggest he entered the United States prior to that date. For example, the record contains a form letter on the letterhead of [REDACTED] as described above, that includes the applicant's name and is dated April 15, 1981. Although the letter does not contain the necessary detailed information, the format of the letter suggests that it has been provided to demonstrate the applicant's residence in the United States on April 15, 1981. In addition, the record contains two documents signed by [REDACTED], an individual who claims that the applicant lived with him at [REDACTED] New York, New York. Although one document is notarized and the other is not, the information in the two documents is inconsistent regarding the time period the applicant lived at this address; either from December 1980 to February 1985 or December 1981 to February 1985. Further, one of the envelopes the applicant submitted shows a date stamp of June 16, 1981, a date prior to the time the applicant testified that he entered the United States. Although as footnoted below, the AAO does not find the envelopes submitted probative and the AAO does not find that the photocopy of the [REDACTED] letter contains sufficient identifying information and that the [REDACTED] documents are consistent, these four documents appear to have been submitted to establish the applicant's entry into the United States prior to January 1, 1982. As three of these documents contradict the applicant's testimony regarding his initial entry into the United States in September 1981, the AAO does not find the documents credible. Moreover, the submission of these documents casts doubt upon the credibility of the applicant. 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. 582, 591-92 (BIA 1988).

² The record includes numerous other receipts dated in late 1988, 1989, 1990, and 1991, times irrelevant to the applicant's residence from January 1, 1982 to May 4, 1988.

³ These date stamps are not embedded within the postmark but appear on random areas of the envelopes. The significance of the date stamps has not been explained. The AAO finds that the envelopes with randomly placed, inexplicable date stamps are not probative in this matter.

In addition, the record contains evidence that a Form I-130, Petition for Alien Relative, submitted by [REDACTED] [REDACTED] as the applicant's wife on his behalf was denied on March 7, 2005. The reasons for denial were detailed in an October 7, 2004 letter indicating that Citizenship and Immigration Services (CIS) had received multiple petitions for spouses where the photos submitted for the petitioner showed that the same person was filing under different names and multiple spouse petitions by the same individual for different spouses. In light of the Form I-130 denial and the inconsistencies in the record regarding the applicant's entry into the United States prior to January 1, 1982 and his continuous unlawful residence, the applicant's credibility is in question.

The AAO has also reviewed the several documents pertaining to the applicant's claimed employment from sometime in 1981 or October 1981 to 1989. The AAO has examined the photocopies of the letters bearing dates of December 17, 1981 and February 5, 1982 purportedly from the applicant's employer, [REDACTED] Iron Works, Inc., addressed to the Catholic Migration and Refugee Office and the Department of Labor. The AAO does not find the photocopies of the letters to the Catholic Migration and Refugee Office and the Department of Labor probative in this matter. The AAO observes that the evidentiary rule at 8 C.F.R. § 245a.2(d)(6) provides: "[i]n judging the probative value and credibility of the evidence submitted, greater weight will be given to the submission of original documentation." The lack of information regarding the underlying purpose of these letters coupled with the fact that the letters are not originals and in light of the other inconsistencies in the record already noted, cast doubt on the authenticity of the documents. Without originals to examine the AAO does not find the letters probative.

The AAO has also reviewed the March 30, 1992 affidavit and the January 1993 declaration of [REDACTED] as well as the March 25, 1992 affidavit signed by [REDACTED], [REDACTED] Iron Works, Inc. foreman regarding the applicant's employment. 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. These letters/affidavits do not contain declarations that identify the location of the company records, or 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, the applicant has provided only an IRS Form W-2 from this employer for the 1989 year. In light of the inconsistencies in the record already noted and the failure of the claimed employer to comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i), the AAO finds these letters/affidavits have minimal probative value.

The AAO has also reviewed the April 1992 affidavit in the record signed by [REDACTED] wherein she states that she has known the applicant since 1981. Although the affiant claims to have known the applicant since 1981, she fails to provide details regarding her claimed relationship with the applicant or to provide any information that would indicate personal knowledge of the applicant's 1981 entry to the United States, his places of residence, or the circumstances of his residence over the prior eleven years of her claimed relationship with the applicant. The affiant fails to note how or where she met the applicant. Lacking relevant details, this affidavit has minimal probative value. Similarly, the September 7, 2006 affidavit signed by [REDACTED], wherein the affiant states that she has known the applicant since 1982 does not include any

details regarding her claimed relationship with the applicant and does not provide any information indicating how she met the applicant or of subsequent interactions with the applicant. The AAO finds that this affidavit does not have probative value.

The AAO also finds the photocopy of the November 5, 1981 form letter from a landlord that includes the applicant's name handwritten in but no other identifying information lacks probative value. The letter is not an original and does not include any information regarding the rental premises. As the letter lacks sufficient identifying information the AAO is unable to discern any detail to assist in substantiating the applicant's residence in the United States during the applicable time period.

The AAO has also reviewed the October 17, 1987 declaration page of a life insurance policy showing the applicant as the insured, an undated letter from the Our Lady of Mercy Rectory, Bronx, New York church, a June 1, 1992 letter written on the letterhead of St. Martin of Tours in Brooklyn, New York church, and an October 24, 1987 layaway receipt. Although the two letters from the pastors of the churches do not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(v), these letters indicate that the applicant received instruction or attended services at the churches in 1987 and 1988. In addition, the June 7, 1990 letter signed by the program administrator of the Solidaridad Humana Comprehensive Learning Center indicating the applicant enrolled in an adult education program on January 4, 1988 and the two receipts issued to the applicant on January 10, 1988 and to April 16, 1989 are evidence that the applicant was in the United States in 1988. The letters from the churches, the letter from the Solidaridad Humana Comprehensive Learning Center, the insurance declaration page, and the receipts are sufficient to demonstrate that it is more likely than not that the applicant resided in the United States from sometime in 1987 to 1988 and later.

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 beginning prior to January 1, 1982, through May 4, 1988. The AAO finds that the record contains deficient affidavits and letters that are inconsistent with the applicant's statements; affidavits and declarations that do not provide sufficient information to comply with the applicable regulations; and a Form I-130, Petition for Alien Relative, which was denied because the petition submitted was questionable.⁴ The information in the record regarding the applicant's entry into the United States and continuous residence in the United States to October 1987 is not credible. The applicant has not provided contemporaneous, credible evidence of his continuous unlawful residence in the United States prior to January 1, 1982 to October 1987. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and the submission of inconsistent evidence seriously detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), 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 and the inconsistencies in the record, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States for the requisite statutory period.

⁴ Although provided an opportunity to appeal the decision, the record does not contain of an appeal in the Form I-130 matter.

Beyond the decision of the director, the AAO finds that the applicant is barred from subsequent immigration visa petition approval because of the finding of marriage fraud in the decision denying the Form I-130, Petition for Alien Relative. *See* section 204(c) of the Immigration and Naturalization Act; 8 U.S.C. § 1154(c).

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 to October 1987, 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.