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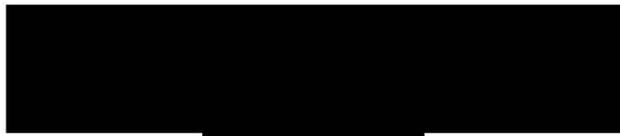
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
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L-2



FILE: [REDACTED]
MSC 02 228 62712

Office: DALLAS

Date: OCT 30 2008

IN RE: Applicant: [REDACTED]

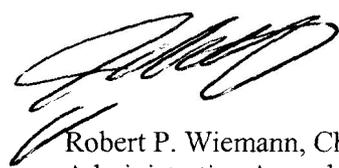
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), *amended by* Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



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: On December 22, 2006, the District Director, Dallas, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application, finding that the applicant did not establish, by a preponderance of the evidence, that he entered the United States before January 1, 1982, and resided continuously in the United States, prior to January 1, 1982, and through May 4, 1988. The director noted the applicant's file contained some conflicting information between affidavits from the applicant's friends and his applications. The director concluded that the affidavits submitted were insufficient to establish his burden of proof.

On appeal, counsel for the applicant asserts that the applicant's claim can be approved as long as the affidavits are credible and verifiable. Counsel cites to and submits a copy of a Memorandum reproduced in a March 27, 1989, issue of Interpreter Releases.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. See § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite period, 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 states 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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. §245a.2(d)(3)(vi)(L). See 8 C.F.R. § 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony 8 C.F.R. § 245a.12(f). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

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.

A LIFE Legalization applicant must also provide evidence establishing that, before October 1, 2000, he or she was a class member applicant in a legalization class-action lawsuit. See 8 C.F.R. § 245a.14. In this case, the record reflects that the applicant applied for such class membership by submitting a "Form for Determination of Class Membership in *CSS v. Meese* [*CSS lawsuit*]," accompanied by a Form I-687 "Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act)," dated July 16, 1990.

The record reflects that on May 16, 2002, the applicant submitted the current application. On October 28, 2003, the applicant appeared for an interview based on the application.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden of establishing by a preponderance of the evidence, that his claim of entry into the United States before January 1, 1982, and continuous residence in the United States during the requisite period is probably true. Upon examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has failed to meet this burden.

Although some credible evidence of residence beginning in 1985 is included in the record, there is minimal evidence of residence before 1985.

The applicant has submitted some credible documentation to establish that he was physically present in the United States beginning in 1985 to the present, including several envelopes containing the applicant's name and address at [REDACTED] in Dallas and letters from [REDACTED] and [REDACTED]. He has not, however, submitted evidence to establish his continuous residence and continuous physical presence prior to that date. The record of proceeding contains the following evidence relating to the years 1981 to 1984:

Letters and Affidavits

- A letter sworn to on February 17, 2007, from [REDACTED]. Ms. [REDACTED] provides her current address and states that the applicant rented a room at her residence located at [REDACTED] in Dallas from May 1981 to 1990. She asserts that the applicant is of “sound mind and was a good tenant.” In reference to a nearly identical letter from her dated July 9, 1990, Ms. [REDACTED] asserts that she made a mistake when she previously mentioned that the applicant resided with her from 1980 to 1990 due to the fact that she had several tenants at the same time. Although 1980 is the year the applicant says he arrived in the United States, Ms. [REDACTED] does not indicate that she has any personal knowledge of his claimed February 1980 entry into the United States. While Ms. [REDACTED] claims that the applicant lived with her for almost ten years, her statement lacks any details demonstrating any personal knowledge of the applicant’s entry into the United States and his residence here during the requisite period, other than the fact that she lived in her house. She does not indicate when, where, or under what circumstances she met the applicant. As the applicant’s landlady of nearly ten years, Ms. [REDACTED] fails to submit corroborating evidence of the applicant’s residence in her house, such as a lease or rent receipts, or in the alternative, an explanation of the payment arrangements that existed for the applicant. Lacking such relevant detail, the letter can be afforded only minimal weight as evidence of the applicant’s residence in the United States for the requisite period;
- A letter dated February 19, 2007, from [REDACTED]. Mr. [REDACTED] provides the applicant’s current address and states that he has known the applicant since July 1982, when they met through an amateur Dallas baseball association. He states that the two have been members of the association since they met. He does not provide any specific details of the circumstances of the applicant’s residence in the United States during the statutory period. He does not provide the addresses where the applicant lived and appears to have no personal knowledge of the applicant’s entry into the United States. Given this lack of detail, the letter can be given minimal weight as evidence of the applicant’s continuous residence or physical presence in the United States during the requisite period;
- An affidavit notarized on February 17, 2007, from [REDACTED]. Mr. [REDACTED] provides the applicant’s current address and states that he has known the applicant since 1984, when they both worked at a construction site. He states that the two worked there until 1990 and remain friends. While Mr. [REDACTED] states that he has known the applicant for over 23 years, he does not provide any specific details of the circumstances of the applicant’s residence in the United States during the statutory period. He does not provide the addresses where the applicant lived and appears to have no personal knowledge of the applicant’s entry into the United

States. This letter therefore has minimal weight as evidence of the applicant's residence in the United States during the requisite period; and,

- A letter dated July 9, 1990, from [REDACTED]. Mr. [REDACTED] asserts that the applicant worked for him as a construction laborer from March 1981 to the date the letter was written. This letter can be given little evidentiary weight because it lacks sufficient detail and information required by the regulations. Specifically, it is not on letterhead and the employer fails to provide the applicant's address at the time of his employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the employer also fails to declare which records his information was taken from, to identify the location of such records, and to state whether such records are accessible, or, in the alternative state the reason why such records are unavailable. In addition, the letter listed his position but did not list the applicant's duties.

For the reasons noted above, these letters and affidavits can be given little evidentiary weight and are of little probative value as evidence of the applicant's residence and presence in the United States for the requisite period prior to 1985. 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.

The record of proceedings contains other documents, including letters from [REDACTED] and proof of filing of 2001 and 2002 Internal Revenue Service (IRS) Forms 1040A. All of this evidence is dated after May 4, 1988, and does not address the applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have first entered the United States without inspection on February 18, 1981, and to have resided for the duration of the requisite period in Texas. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has failed to do so. In this case, his assertions regarding his entry are not supported by sufficient evidence in the record.

Having examined each piece of evidence, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has not shown by a preponderance of the evidence he entered into the United States before January 1, 1982, and that he resided continuously in an unlawful status for the requisite period.

The absence of sufficiently detailed and probative documentation to corroborate the applicant's claim of entry and continuous residence for the entire requisite period, 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 on affidavits letters, which lack relevant details, and the lack of any probative evidence of his entry and residence in the United States from prior to January 1, 1982, through May 4, 1988, the applicant has failed to establish by a preponderance of the evidence that he maintained continuous, unlawful residence in the United States as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, 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.