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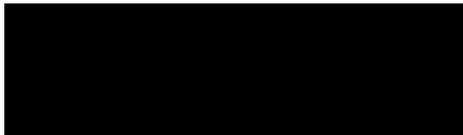
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
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Services

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FILE: [REDACTED] Office: MEMPHIS
MSC 02 162 62777

Date SEP 02 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:
[REDACTED]

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.


for 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, Memphis, Tennessee, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel asserts that the applicant submitted sufficient credible evidence to establish eligibility, and that the director erred in not considering all of the evidence. Counsel submits additional evidence on appeal.

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 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.

On August 25, 2006, the director issued a notice of intent to deny (NOID) informing the applicant of the Service's intent to deny his LIFE Act application because he had failed to establish the requisite continuous residence. The director noted that the applicant submitted affidavits in support of his claim. However, the affidavits were insufficient to establish the requisite continuous residence. The applicant was granted thirty days to respond to the notice.

In the Notice of Decision, dated February 15, 2007, the director denied the instant application based on the reasons stated in the NOID. The director noted that the applicant resubmitted two affidavits from family members and additional evidence that he had departed the United States in 1986 (rather than in 1987 as previously indicated in his application) to get married in Mexico, and that each of the affidavits submitted with the initial application also indicated that the applicant had departed the United States for 45 days in 1987, rather than 1986, to get married in Mexico.

On appeal, counsel asserts that the applicant has submitted sufficient evidence to establish eligibility for LIFE Act benefits. With his appeal, counsel submits a statement in affidavit form from the applicant, dated April 11, 2007, and two affidavits from [REDACTED] and [REDACTED] respectively, both attesting to knowing the applicant in the United States since 1982.

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. The applicant submitted employment letters and affidavits as evidence to establish the requisite continuous residence in support of his Form I-485 application. The AAO reviewed the entire record. Here, the submitted evidence is not relevant, probative, and credible.

Employment Letter / Affidavits

The applicant submitted an undated letter of employment from [REDACTED] in affidavit form, stating that the applicant worked with him from September 1986 as a yard worker, and that the applicant was paid in cash. The letter, however, is not dated and does not pertain to the period prior to September 1986. This employment letter, therefore, is not probative of the applicant's residence in the United States throughout the requisite period.

It is also noted that the letter states that the information was taken from company records, however, it failed to 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).

The applicant submitted the following affidavits:

- 1) Two affidavits from [REDACTED] dated September 11, 2006, stating that the applicant resided with her and her family in Houston, Texas, from January 1981 to December 1994. The other affidavit, dated November 25, 1991, states that the applicant resided with her and her husband since his arrival in January 1981. The affiant also states that the applicant did yard work for [REDACTED] in April 1981, until [REDACTED] death in 1987, and the applicant began doing yard work for her husband in September 1986. Ms. [REDACTED] also states that on July 15, 1987, the applicant informed her that he was departing the United States for Mexico to get married, and returned to the United States on August 20, 1987, where he continued to live with them and work with her husband.
- 2) Two affidavits from [REDACTED] one dated September 11, 2006, stating that the applicant resided with her and her family in Houston, Texas, from January 1981 to December 1994. The other affidavit, dated November 19, 1991, states that the applicant resided with his sister, [REDACTED], and her brother [REDACTED], since his arrival in 1981. The affiant also states that the applicant did yard work for [REDACTED] in April 1981, and began doing yard work for her brother, [REDACTED], in September 1986. Ms. [REDACTED] also states that the applicant departed the United States for Mexico in July 1987, to get married, and returned to the United States on August 20, 1987.
- 3) An affidavit from [REDACTED] dated November 21, 1991, stating that the applicant resided in the United States since summer 1985. The affiant also states that the applicant did yard work for [REDACTED] in April 1981, and began doing yard work for [REDACTED] in September 1986. Mr. [REDACTED] also states that the applicant departed the United States for Mexico in July 1987, to get married, and returned to the United States on August 20, 1987.
- 4) An affidavit from [REDACTED] dated September 18, 2006, stating that she and the applicant, her husband, married on August 7, 1986. The affiant also states that the applicant traveled to Mexico in July 1986 and visited for less than 5 weeks.
- 5) An affidavit from [REDACTED], dated October 22, 1991, stating that she has known the applicant since he was 11 or 12 years old, and that the applicant lived with her son Tomas [REDACTED] and his wife since his arrival in the United States, and she has seen the applicant on a daily basis. The affiant, however, does not indicate when the applicant arrived in the United States.
- 6) An affidavit from the applicant, dated September 18, 2006, stating that he had incorrectly stated on his Form for Determination of Class Membership in *CSS v. MEESE*, that he had departed the United States for Mexico on July 15, 1987, to get married. However, the

“correct answer(s)” is that he had departed the United States on July 15, 1986, married in Mexico on August 7, 1986, and he returned to the United States on August 20, 1986.

- 7) Affidavits from [REDACTED], dated March 21, 2007, and [REDACTED] dated March 27, 2007, both stating that they know the applicant resided in the United States since 1982. These affidavits do not establish the applicant’s continuous residence throughout the requisite period as the affiants’ acquaintance with the applicant did not begin prior to January 1, 1982.

The applicant also submitted a Mexican marriage certificate, with an English translation, indicating that he married [REDACTED] on August 7, 1986, in Mexico.

Contrary to counsel’s assertion, the applicant has submitted questionable affidavits. It is noted that three of the affiants are closely related to the applicant. [REDACTED] is the applicant’s sister, [REDACTED] is his brother-in-law, and [REDACTED] is the sister of [REDACTED]. It is noted that neither [REDACTED], nor [REDACTED], revealed their close relationship with the applicant. Also, the affidavits from [REDACTED] and [REDACTED] are questionable as they contradict the applicant’s statement regarding his departure from the United States. The applicant states that he had departed the United States on July 15, 1986 to get married in Mexico on August 7, 1986, and the affidavit from [REDACTED] and the marriage certificate submitted by the applicant indicated that he was married in Mexico in August 1986. The affiants, however, attest that the applicant departed the United States for Mexico in July 1987, to get married, and returned to the United States on August 20, 1987. In addition, it is noted that the applicant indicates on his Biographic Data Form, G-325A, dated October 8, 2001, that he resided in Micatlan, Mexico, from August 1985 to August 1986. This discrepancy raises the issue whether the applicant has had a single absence from the United States which exceeded over 45 days and aggregate of over 180 days, and, puts into question whether the applicant has been a continuous resident since January 1, 1982, as he claims.

These unresolved discrepancies cast considerable doubt on whether the applicant’s claim that he illegally entered the United States before January 1, 1982, and resided continuously in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988, is true. Doubt cast on any aspect of the applicant’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. The applicant has failed to reconcile these discrepancies in the record. It is incumbent upon the 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status during the requisite period.

In addition, 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 affiants included any supporting documentation of the affiant’s presence in the United States during the requisite period. 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.

The applicant has, therefore, failed to establish that he resided in continuous unlawful status in the United States from before January 1, 1982 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.