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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 03 252 60897

Office: DALLAS

Date:

SEP 24 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. 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 April 25, 2007, 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 determined that the evidence the applicant submitted consisted of affidavits that the director was unable to verify. The director noted that the applicant did not respond to a Notice of Intent to Deny (NOID) issued on April 18, 2006.

On appeal, counsel for the applicant asserts that the director applied a burden of proof greater than that required by law. Counsel asserts that it is unreasonable to expect the applicant to be able to reach employers to verify information they provided 17 years ago. Counsel asserts that the director should have asked the applicant to try to obtain updated telephone numbers.

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.

The record reflects that on June 9, 2003, the applicant submitted the current application. On May 24, 2004, 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.

The record of proceeding contains the following evidence relating to the requisite period:

Letters and Affidavits

An affidavit dated May 28, 2002, from [REDACTED] asserts that he and the applicant are from the same town in Mexico. He states that he first found out that the applicant was in the United States in the early part of 1980 when he heard that the applicant has moved into his apartment complex. He states that he remembers it was the early part of 1980 because it was before he was married and before the birth of his daughter. He states that he was married in July 1980 and his daughter was born in December 1980. He states that he saw the applicant almost every weekend. He states that when he moved out of the apartment complex in about the middle of 1981, the applicant was living in the complex. He states that after he moved away, he continued to see the applicant almost every weekend. He states that they shopped and played basketball together and ate at each other's house. He states that in the latter part of 1981, the

applicant moved to an apartment in North Dallas and lived with his sister and maybe an uncle or friends for about one year. He states that he visited the applicant at his new apartment but does not recall the exact address. Mr. [REDACTED] asserts that from 1980 to 1990, the longest period he did not see the applicant was probably for about three months. He believes the applicant went to Mexico twice in the 1980s.

This affidavit can only be given limited weight as evidence of the applicant's continuous residence during the statutory period. First, while [REDACTED] provides some details about the applicant's residence from about 1981 to 1983, he provides few, if any, details about and fails to indicate sufficient personal knowledge of the applicant's continuous residence from about 1983 to the end of the statutory period in 1988. [REDACTED] asserts that he and the applicant lived in the same apartment complex from the early part of 1980 to the middle part of 1981, but does not provide the address of the complex. [REDACTED] specifies that after he moved out of the complex in the middle of 1981, that he and the applicant saw each other almost every weekend, when they shopped, exercised, and dined together. He states that when the applicant moved into an apartment in North Dallas with his sister, he visited the apartment, but he does not provide the same level of detail about his personal knowledge of the circumstances of the applicant's residence. For example, he does not state when, where, or under what circumstances he saw the applicant. [REDACTED] states that the applicant moved out of the apartment in North Dallas in the latter part of 1981, but does not provide information about where the applicant lived after that. He states that the longest period of time he did not see the applicant from 1980 to 1990 was about three months, but he does not state where he or the applicant were living from about 1982 to 1990. Finally, [REDACTED] does not indicate that he has any personal knowledge of the applicant's entry into the United States.

Second, the information provided by [REDACTED] contradicts information provided by the applicant on his Form I-687 dated August 17, 1990. Mr. [REDACTED] states that he and the applicant lived in the same apartment complex from the early part of 1980 to the middle part of 1981 and that the applicant moved out of that apartment complex in the latter part of 1981, but the applicant states on his Form I-687 that he first entered the United States in July 1981 and lived at [REDACTED] in Dallas, Texas, from July 1981 to December 1983. The applicant stated on his Form For Determination of Class Membership dated August 17, 1990, that he first entered the United States in July 1981. 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). The applicant has made no attempt to explain the

inconsistent information regarding his date of entry and his place of residence from 1980 to 1983;

- An affidavit dated May 28, 2002, from [REDACTED] the applicant's childhood friend from Mexico. [REDACTED] states that he contacted the applicant in 1984 while visiting friends in Dallas. He states that he visited the applicant at the applicant's apartment in Dallas near Starlight Road and Webb Chapel Extension for a few hours. He states that he next saw the applicant in 1985 when he visited the applicant at his new apartment for a few hours. He states that the next time he saw the applicant was in about 1987 when he visited the applicant at yet another apartment in Dallas. [REDACTED] recalls that the applicant told him that he traveled to Mexico for a short trip in 1980. He states that he moved to Dallas in 1989 or 1990. This affidavit can be given minimal weight as evidence of the applicant's continuous residence. [REDACTED] fails to indicate any personal knowledge of the applicant's claimed entry to the United States and fails to provide sufficient details about or personal knowledge of the circumstances of applicant's continuous physical presence, other than the fact that he saw him in the United States on three separate occasions during the span of three years; and,
- Letters from two of the applicant's former employers. In a letter dated July 30, 1990, [REDACTED], owner of Four Seasons Landscaping Service, states that the applicant was employed by him from September 7, 1981, through May 20, 1986. In a letter dated July 31, 1990, from [REDACTED], owner of [REDACTED] Paint and Body, [REDACTED] states that the applicant worked for him from June 15, 1986, to the date the letter was written. He states that the applicant worked as a bodyman five days a week and earned about \$6 per hour in cash because he is undocumented. He states that he has not withheld any deductions of any kind. Both employers attest to the applicant's strong work ethic and good moral character.

These letters can be given little evidentiary weight because they lack sufficient detail and information required by the regulations. Specifically, the employers failed 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, they also failed to declare which records their 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 letters from [REDACTED] listed the applicant's position but did not list his 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. 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 a 2003 Internal Revenue Service (IRS) Form 1040A, U.S. Individual Income Tax Return, with accompanying IRS Form W-2, Wage and Tax Statement. This evidence is dated after May 4, 1988, and does 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 in July 1981, without inspection 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 any credible 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 alone, 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.