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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 01 352 60879

Office: NEW YORK

Date: APR 24 2009

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).

IN BEHALF OF APPLICANT:

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. Grissom
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 asserts that the applicant has submitted enough documentary evidence which when coupled with his testimony amounts to sufficient evidence to meet his burden.

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. Section 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 periods, is admissible to the United States under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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 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.

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.

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

- An undated letter from [REDACTED] of Grace Church in White Plains, New York, who indicated that the applicant has been a member of the church since December 1981.
- Affidavits from [REDACTED] and [REDACTED] attesting to the applicant's residence in the United States since 1981.
- An undated letter from [REDACTED] who attested to the applicant's employment in maintenance at [REDACTED] from February 1982 to July 1984.
- A letter dated November 12, 1989, from [REDACTED], assistant director of The Galleria Mall, who attested to the applicant's employment as a cleaner man from August 1984 to April 1987.
- Statements in the Spanish language with the required English translations from the applicant's mother and acquaintances, [REDACTED] and [REDACTED], attesting to the applicant's visit to Mexico in October 1987.
- An undated letter from [REDACTED], co-owner of La Strada Restaurant in Ossining, New York, who attested to the applicant's employment as a cook from May 1987 to April 1989.
- Affidavits from [REDACTED] and [REDACTED] of Elmsford, New York, who indicated they have known the applicant since January 1, 1988 and attested to the applicant's residence in the United States since that time.
- Several receipts and money order receipts dated during the requisite period.
- A notice from the Social Security Administration requesting social security information for 1987.
- A letter dated May 3, 2007, and dental records from [REDACTED] who indicated that the applicant was a patient of his father from 1987 to 1988.
- A letter dated July 16, 1986, from USAA Casualty Insurance Company regarding an insurance policy effective February 5, 1985 to April 30, 1986.
- Affidavits from [REDACTED], who indicated that she has known the applicant since 1986 and attested to the applicant's moral character.
- A one-year lease agreement entered into on January 1, 1985 between [REDACTED] and the applicant for premises at [REDACTED], White Plains, New York.

- Photocopies of envelopes postmarked January 31, 1983 and February 28, 1983 to the applicant at [REDACTED], White Plains, New York.
- Photocopies of New York State Insurance Identification cards issued on April 30, 1981, 1982 and 1983.
- A letter dated May 21, 2006, from [REDACTED] of ALTA Metal Finishing, Inc. who attested to the applicant's employment from 1981 to 1984.
- Earnings statements issued during the requisite period from Sanitor Building Services, Inc. Sherman Pressure Casting Corp. and ALTA Metal Finishing Inc.
- An additional affidavit from [REDACTED], who indicated that he has known the applicant since 1981.
- An affidavit from [REDACTED], who indicated that he has known the applicant since 1982 and attested to the applicant's continuous residence in the United States since that time.
- A letter dated February 13, 2006, from [REDACTED], associate rector of Grace Church of the Episcopal Diocese of New York, who indicated that the applicant was a member of the parish 25 years ago in 1981.
- An affidavit notarized May 17, 2007, from [REDACTED] who indicated that he has been acquainted with the applicant for the past 25 years. The affiant attested to the applicant's moral character.

On April 23, 2007, the director issued a Notice of Intent to Deny, which advised the applicant that the affidavits submitted did not contain sufficient objective evidence to which they could be compared to determine whether the attestations were credible, plausible, or internally consistent with the record. The affidavits submitted appeared to be neither credible nor amenable to verification and that no evidence was submitted demonstrating that the affiants had direct personal knowledge of the events testified to in their respective affidavits.

In response, the applicant asserted that the director had discounted the evidence submitted and his testimony at the time of the interview. The applicant indicated that he had provided documentation of an evidentiary nature throughout the pendency of his application. The applicant indicated that he had met his burden of proof.

On appeal, the applicant reiterates statements previously provided in response to the Notice of Intent to Deny. The statements on appeal relating to the sufficiency of the evidence the applicant submitted in support of his claim of continuous residence are noted. However, during the adjudication of the applicant's appeal, information came to light that adversely affects the applicant's overall credibility as well as the credibility of his claim of residence in this country from prior to January 1, 1982 to May 4, 1988. The applicant presented employment affidavits from ALTA Metal Finishing Inc., Sherman Pressure Casting Corp., and Sanitor Building Services Inc. However, the applicant did not claim employment with these entities on his Form I-687 application. The New York State Insurance Identification cards did not display the applicant's complete name and address. The applicant's name on the postmarked window envelopes appeared to have been added at a later time.

As such, the AAO issued a notice to the applicant dated February 24, 2009, requesting that the originals of the New York State Insurance Identification Cards and the postmarked envelopes be submitted pursuant to 8 C.F.R. § 103.2(b)(5).¹ The applicant was also requested to provide a social security printout of his earnings corresponding to the stated earnings from ALTA Metal Finishing Inc., Sherman Pressure Casting Corp., and Sanitor Building Services Inc. Except for the social security printout, the applicant, in response, provided the requested documents in their original format.

The AAO, however, does not view the documents discussed above as substantive enough to support a finding that the applicant continuously resided in the United States since before January 1, 1982, through May 4, 1988, as he has presented contradictory documents, which undermines his credibility.

Window envelopes allow an address to show through the window eliminating the need to address the outside of the envelope. The envelopes presented lack probative value as the applicant's name and address were handwritten on each envelope. It is unclear why the applicant did not provide the letters that accompanied the envelopes as they would have listed his name and address. Furthermore, the address listed on the envelopes do not correspond with the address the applicant claimed to have resided at during the requisite period.

The New York State Insurance Identification cards also lack probative value as they list a partial name and address of the individual to whom they were addressed to. Further, the partial address listed on each card does not correspond with the applicant's claim of residence on his Form I-687 application.

In regards to the social security printout, the applicant asserts that he was advised by a representative of the Social Security Administration Office "that my social security number was not valid and I could not obtain the printout." The applicant, however, provided no evidence to support his assertion. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

All the employment letters 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 also 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. As previously discussed, the applicant did not claim on his Form I-687 application employment at ALTA Metal Finishing Inc., Sherman Pressure Casting Corp., and Sanitor Building Services Inc., during the requisite period.

¹ U.S. Citizenship and Immigration Services may, at any time, request submission of an original document for review.

In his initial affidavit, [REDACTED] indicated that he has known the applicant since January 1, 1988. However, in his subsequent affidavit, the affiant amended his statement to indicate he has known the applicant since 1981. As conflicting statements have been provided, it is reasonable to expect an explanation from the affiant in order to resolve the contradictions. However, no statement from the affiant has been submitted to resolve his contradicting affidavits.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. The affidavits from the remaining affiants do not provide detailed evidence establishing how they knew the applicant, the details of their association or relationship, or detailed accounts of an ongoing association establishing a relationship under which the affiants could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period. To be considered probative, an affiant's affidavit must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. The affidavit must contain sufficient detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of the facts asserted. The affidavits provided by the affiants do not provide sufficient detail to establish that the witness had an ongoing relationship with the applicant for the duration of the requisite period that would permit the applicant to know of the applicant's whereabouts and activities throughout the requisite period.

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 regulation at 8 C.F.R. § 245a.12(e) provides that “[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods.” Preponderance of the evidence is defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black’s Law Dictionary 1064 (5th ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991). Given the credibility issues arising from the documentation provided by the applicant, it is determined that 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.

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