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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 02 270 61628

Office: CHICAGO

Date:

FEB 03 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).

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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 "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: On May 9, 2005, the Director, Chicago, 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 failed to establish, by a preponderance of the evidence that he entered the United States before January 1, 1982, and thereafter resided in continuous unlawful status through May 4, 1988.

On appeal, counsel for the applicant asserts the affidavits the applicant submitted were acceptable form of evidence to prove that the applicant entered the United States prior to January 1, 1982, and that he resided in the United States until May 4, 1988. Counsel further asserts that the director misapplied the preponderance of the evidence standard and “failed to show any evidence to the contrary.”

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence 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 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 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 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). To meet his or her burden of proof, an applicant

must provide evidence of eligibility apart from his or her own testimony. 8 C.F.R. 245a.12(f). Affidavits that indicate specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits that provide 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 January 11, 1990.

On June 27, 2002, the applicant submitted the current Form I-485, Application to Register Permanent Residence or Adjust Status. On February 19, 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 and establish 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.

The documentation that the applicant submits in support of his claim consists of several documents relating to the applicant's places of residence during the statutory period and several miscellaneous letters and affidavits.

The evidence relating to the applicant's places of residence consists of letters and two residential leases. The residential leases, dated August 26, 1982, and August 22, 1983, cover the time periods beginning September 1, 1982, through August 31, 1983, and September 1, 1983, to August 31, 1984. The lease indicates the address as [REDACTED] Chicago, Illinois, 60640 and the lessor as [REDACTED]. A letter from [REDACTED] dated March 1, 1990, states that the applicant lived at this address from September 1981 to October 1986. These leases and this letter can be given minimal weight as evidence of the applicant's entry into the United States before January 1, 1982, and his continuous residence in the United States.

The address indicated in the letter from [REDACTED] and the leases are inconsistent with the address the applicant provided on his Form I-687. On his Form I-687, the applicant listed his residence from September 1981 to October 1986 as [REDACTED] Chicago, IL 60626. It is

incumbent upon the applicant 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 not attempted to explain this inconsistency and has not submitted independent objective evidence pointing to where the truth lies about the address he resided at from August 1981 to October 1986. Furthermore, the time period covered by the first lease begins on August 26, 1982. This evidence does not address the date of the applicant's initial entry into the United States and the time period before August 26, 1982. In addition, no leases were submitted for the time period after August 31, 1984, through October 1986. The letter from [REDACTED] can therefore be given minimal evidentiary weight because it is not supported by a residential lease, rent receipts, or in the alternative, a detailed explanation of the payment agreement between [REDACTED] and the applicant.

A letter notarized on March 9, 1994, from the manager at [REDACTED] indicates that the applicant lived at [REDACTED] from November 1986 to September 1990. A letter dated July 5, 1990, from [REDACTED] states that the applicant lived with him in apartment number [REDACTED] at [REDACTED] Chicago, Illinois, 60660 from October 1986 to the date the letter was written. As the landlord, the manager at [REDACTED] fails to submit corroborating evidence of the applicant's residence in the dwelling, such as a lease or rent receipts, or in the alternative, an explanation of the payment arrangements that existed with the applicant. [REDACTED] fails to provide documentation that he himself continuously resided at the given address and, as the applicant's roommate for over four years, fails to submit corroborating evidence of the applicant's residence in the dwelling. As such, these letters can be afforded minimal weight as evidence of the applicant's continuous residence in the United States during the requisite period.

The fill-in-the-blank "Affidavit of Witness" form signed by [REDACTED] can be given minimal weight as evidence of the applicant's required continuous residence as it contains insufficient details regarding any relationship with the applicant during the requisite period. The form indicates that the affiant has personal knowledge that the applicant has resided in the United States in Chicago, Illinois. The form allows the affiant to fill in a statement that he or she "is able to determine the date of the beginning of his or her acquaintance with the applicant in the United States from the following fact(s): ____." [REDACTED] added simply: "That he was regularly present in the evening prayers everyday."

This affidavit, prepared on a fill-in-the-blank form, contains minimal details regarding any relationship with the applicant during the requisite period. The affiant fails to indicate any personal knowledge of the applicant's claimed entry to the United States or of the circumstances of his residence. Lacking such relevant detail, the affidavit can be afforded only minimal weight as evidence of the applicant's residence in the United States for the requisite period.

Similarly, the affidavit from [REDACTED] can be given minimal evidentiary weight. In a fill-in-the-blank "affidavit," [REDACTED] simply asserts that he knows that the applicant left the United States in June 1987 and returned in July 1987. While the affidavit relates to the applicant's departure and subsequent return in 1987, it does not address the applicant's entry before January 1, 1982, or his continuous residence thereafter through May 4, 1988. [REDACTED] indicates that the applicant left the United States in June 1987 and returned in July 1987, but does not indicate when, where, or under what circumstances he met the applicant and does not indicate how long thereafter, how often, and under what circumstances he saw the applicant. Thus, this letter can be given minimal weight as evidence of the applicant's continuous residence in the United States. In addition, this letter can only be used to show that the applicant was physically present in 1987 when [REDACTED] says the applicant left and returned to the United States, and does not cover the period prior to January 1, 1982, through 1987.

The fill-in-the-blank "Affidavit of Witness" form signed by [REDACTED], the applicant's employer can be given little evidentiary weight as it fails to comply with the regulatory requirements at 8 C.F.R. § 245a.2(d)(3)(i). Specifically, [REDACTED] does not provide the applicant's address at the time of employment, any periods of layoff, declare whether the information was taken from company records, or 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.

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

The record of proceedings contains other documents, including an Illinois State identification card, a Service Employer's International Union membership card, bills from Illinois Bell, Ameritech, and Commonwealth Edison. This evidence is dated after or refers to events that occurred 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 in December 1980, and to have resided for the duration of the requisite period in Illinois. 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.

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, the applicant has failed to establish continuous residence in an unlawful status in the United States for the requisite period, as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*.

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 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.