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U.S. Citizenship
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Services

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FILE:

MSC 02 236 64473

Office: SAN FRANCISCO

Date:

JUL 07 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, San Francisco, California and remanded by the Administrative Appeals Office (AAO). The application was denied again by the Director, San Francisco, California, and is now before the AAO on appeal. The appeal will be dismissed.

The directors 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 from the subsequent decision, counsel puts forth a brief disputing the director's findings. Counsel provided copies of documents that were previously submitted.

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.

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided rent receipts, and affidavits from [REDACTED], and [REDACTED]

and [REDACTED] indicated that they were neighbors of the applicant while residing at [REDACTED] from June 1981 to September 1989 and from 1981 to 1990, respectively. [REDACTED] indicated that he drove the applicant to Mexico on March 20, 1988.

[REDACTED] in an affidavit notarized May 11, 2003, attested to the applicant's residence in Wilmington, California from 1981 to 1990. The affiant asserted that the applicant is his wife's cousin and that they were neighbors.

[REDACTED] in his affidavits notarized July 9, 1993, and May 10, 2003, attested to the applicant's residence at [REDACTED] Wilmington, California May 1981 to April 1988. The affiant asserted that the applicant paid him rent from May 1981 to March 1988 because he was the manager of the apartment building. The affiant asserted that the applicant was the gardener of this apartment building.

On appeal from the initial decision, the applicant presented an additional affidavit from [REDACTED] who reaffirmed the applicant's residence at [REDACTED] California from 1981 to 1988, and asserted, "[t]he receipts that he presented to the INS are Authentic and let it be known that I never kept records of such receipts."

On October 25, 2007, the director issued a Notice of Intent to Deny, which advised the applicant that the rent receipts lacked credibility as it appeared they were new and were produced at the same time. The applicant was advised 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.

Counsel, in response, asserted that the applicant consistently testified and demonstrated through sworn affidavits and other supporting documents that he continuously resided in the United States since February 1, 1981. Counsel provided an affidavit from the applicant who indicated that he was 13 years old when he first entered the United States, did not have any family members residing in the United States and did not attend school. The applicant asserted that for seven years he resided at [REDACTED] Wilmington, California with [REDACTED], who passed away 14 years ago. The applicant stated although the rent agreement was not in his name, he was in charge of paying the rent to the apartment manager, [REDACTED] because "our room mates drunk regularly." The applicant asserted he informed [REDACTED] that he "needed proof of that he received the rent money from me and he gave several receipts of the period that I paid him rent." The applicant asserted that he would be hired to do odd jobs cleaning yards, helping with painting

and roofing, but did not keep in touch with the employers. The applicant asserted that he met [REDACTED] June 1981 and has remained in contact since that time. The applicant provided [REDACTED] contact information. The applicant asserted that except for the affidavits presented, he has no further evidence to provide. The applicant provided:

- An additional affidavit from [REDACTED] who indicated that he met the applicant in May 1981 and resided with the applicant for nine years at [REDACTED]
- An affidavit from a niece, [REDACTED] who indicated that she met the applicant in 1986 and that they lived together at [REDACTED]
- An affidavit from [REDACTED], who indicated that she met the applicant in February 1987 and that they lived together at [REDACTED]
- Affidavits from [REDACTED] and [REDACTED] [REDACTED] who indicated they met the applicant in May 1981 and April 1982, respectively, and attested to the applicant's residence at [REDACTED]. [REDACTED] and [REDACTED] indicated that they lived in the same apartment building as the applicant and [REDACTED] indicated that he used to visit a friend at the apartment building.
- An affidavit from [REDACTED] who indicated that he met the applicant in May 1984 in Wilmington, California. The affiant asserted that the applicant used to play with his older brother.

The director, in denying the application, noted that an investigation was conducted and it was established that [REDACTED] and [REDACTED] did not begin residing at [REDACTED] until April 1984 and 1985, respectively. The director also noted that [REDACTED] indicated that he resided with the applicant for nine years, "when the claimed time period is only for seven years;" and the remaining affidavits did not establish reliable dates of residence.

On appeal, counsel asserts that [REDACTED] did not have to reside in the apartment complex to be the manager and his affidavits never mentioned his own period of residence there. In regards to [REDACTED], counsel asserts that the affiant "could have used a separate mailing address instead of the address of his actual residence." Counsel asserts the director's argument is unfounded as the applicant submitted other affidavits attesting to the same fact. In regards to the affidavit from [REDACTED] counsel asserts, in pertinent part:

The fact that CIS only need proof of seven years does not make untrue the fact that they lived together for nine years as [REDACTED] stated in both of his affidavits. The first affidavit of [REDACTED] executed on 2003 states that he lived with [the applicant] from 1988 to 1990. The second affidavit corroborates that by simple stating nine years from 1988. The CIS's conclusion is therefore unreasonable and without merit.

The statements issued by counsel and the applicant have been considered. 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.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. Considering the length of time they claim to have known the applicant – in most cases since 1981 – the affiants provide remarkably few details about the applicant’s life in the United States, such as where he worked and their interaction with him over the years. 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 from the affiants do not provide sufficient detail to establish that they had an ongoing relationship with the applicant for the duration of the requisite period that would permit them 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 absence of sufficiently detailed documentation to corroborate the applicant’s claim of continuous residence for the entire requisite period seriously 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 upon documents with minimal probative value, 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.