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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:



Office: CHICAGO

Date:

MAR 23 2009

MSC 03 032 60583

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. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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, Chicago, Illinois and the Administrative Appeals Office (AAO) rejected the appeal as untimely filed. The matter will be reopened by the AAO on a Service motion pursuant to 8 C.F.R. § 103.5(a)(8)(b). The appeal will be dismissed.

On motion, the AAO has determined that the appeal was timely filed. The order rejecting the appeal will be withdrawn and the appeal will be adjudicated on its merits.

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 there is no inconsistency in the statements relating to the applicant's continuous presence in the United States from 1981 to 1982.

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 the following evidence:

- An affidavit from [REDACTED] of Santa Maria, California, who attested to the applicant's California residence at [REDACTED] Santa Maria since February 1985. The affiant asserted that he and the applicant used to work in the same occupation.
- An affidavit from [REDACTED] of Santa Maria, California, who attested to the applicant's California residence at [REDACTED] since 1985. The applicant asserted that he and the applicant used to be neighbors.
- A statement from [REDACTED] of [REDACTED] Santa Maria, California, who indicated that the applicant "rented a portion of my house from February 1985 to June 1987."
- A Form I-705, Affidavit Confirming Seasonal Agricultural Employment, from [REDACTED] a grower at [REDACTED], who attested to the applicant's employment from April 1985 to June 1986.
- An affidavit from [REDACTED] of Santa Maria, California who attested to the applicant's residence in Santa Maria since February 1981. The affiant asserted that she met the applicant in 1982 as "we worked together for the same company" and she has been a neighbor and friend of the applicant throughout the years.
- An affidavit from [REDACTED] of Chicago, Illinois, who indicated that he met the applicant in the fields in June 1981 and attested to the applicant's residence in the United States since that time. The affiant asserted that he has visited the applicant at various times in Santa Ana, California.

On August 30, 2004, the director issued a Notice of Intent to Deny, which advised the applicant that he did not provide sufficient primary or secondary evidence to establish his claim. The applicant was advised that [REDACTED] affidavit contradicted the affidavit from [REDACTED] as [REDACTED] indicated that the applicant resided in her home from February 1985 to June 1987. The director noted that the affidavits and other documentation had been taken into consideration; however, it was determined that the applicant had not established by a preponderance of evidence that he met the requirements to adjust his status under the LIFE Act.

Counsel, in response, submitted an amended affidavit from [REDACTED], who stated to have personal knowledge of the applicant's residence in the United States with his brother from February 1981 to May 1992. Counsel asserted that [REDACTED] mistakenly indicated in her initial affidavit to

have personal knowledge that the applicant resided in Santa Maria, California from February 1981 to May 2003. Regarding the affidavits from [REDACTED] and [REDACTED] counsel asserted, in pertinent part:

Because [REDACTED] affidavit does not stated that [the applicant] and she were neighbors for the entire period of time between February 1981 and May 1992 and because her interactions with [the applicant] were not limited to that of a neighbor, this affidavit is not in conflict with the earlier submitted affidavit from [REDACTED]

The director, in denying the application, determined that affidavits from [REDACTED] and [REDACTED] still conflicted with each other. The director noted that because the conflicting affidavits created a level of inconsistency in establishing the applicant's eligibility, they could not be used as evidence for the applicant's application.

On appeal, counsel repeats his assertions again regarding the affidavits from [REDACTED] and [REDACTED]. Counsel asserts that the applicant has met his burden of proof.

The statements of counsel on appeal regarding the amount and sufficiency of the applicant's evidence of residence have been considered. The U.S. Citizenship and Immigration Services (USCIS) has determined that affidavits from third party individuals may be considered as evidence of continuous residence. *See Matter of E-- M--*, supra. In ascertaining the evidentiary weight of such affidavits, USCIS must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E-- M--*, supra, the affidavits would not necessarily be fatal to the applicant's claim, if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony provided. The statements issued by the applicant have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through May 4, 1988.

[REDACTED] and [REDACTED] attested to the applicant's residence at [REDACTED], Santa Maria, California since 1985. The applicant, on his Form I-687 application, however, did not claim residence at this address until June 1987. Further, the affiants failed to provide any details regarding the nature of their relationship with the applicant or the basis for their continuing awareness of the applicant's residence. 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.

[REDACTED] asserts that the applicant resided with his brother in Santa Maria, California during the requisite period and that she worked alongside the applicant for the same company. However, no evidence from the applicant's brother was provided to corroborate this assertion and the affiant did

not provide the name of the company she and the applicant purportedly worked together. Furthermore, as [REDACTED] indicated that she met the applicant in 1982, she cannot attest to the applicant's residence in the United States from February 1981.

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 evaluation of the applicant's claim is a factor on both the quality and quantity of the evidence provided. While affidavits in certain cases can effectively meet the preponderance of evidence standard, the affidavits submitted by the applicant are lacking in probative value and evidentiary weight and, therefore, 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.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

At the time of his initial interview on July 24, 1991, the applicant admitted in a handwritten signed statement, in his native language, that he first entered the United States in February 1982.

This fact tends to establish that the applicant utilized documents in a fraudulent manner in an attempt to support his claim of residence in the United States during the requisite period. By engaging in such an action, the applicant has irreparably harmed his own credibility as well as the credibility of his claim of continuous residence in the United States for the requisite period.

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