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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:

MSC 03 1900 60021

Office: GARDEN CITY

Date:

MAR 23 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, Garden City, 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 did submit a response to the Notice of Intent to Deny. Counsel submits copies of the documents 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 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 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 record contains a Form I-589, Request for Asylum in the United States, and a Form G-325A, Biographic Information, signed and dated February 8, 1994.¹ On the Form G-325A, the applicant listed his residence in his native country, Ecuador, from December 1947 to October 1990.

The record contains a Form I-130, Petition for Alien Relative, filed on behalf of the applicant by his former spouse, which was received September 28, 1994. Accompanying the Form I-130, is a Form G-325A, on which the applicant indicated that he resided in Quito, Ecuador from December 1980 to April 1987 and has been employed at [REDACTED] at [REDACTED] New York since April 1987.

The record contains an Application for Immigrant Visa and Alien Registration signed and dated October 2, 1996. Item 21 requested the applicant to list his residences since the age of 16. The applicant indicated that he resided in Quito, Ecuador from 1963 to April 1987 and in Brooklyn, New York from April 1987 to March 1989.

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 Elmhurst, New York, who attested to the applicant's Elmhurst residence at [REDACTED] from May 1982 to November 1984. The affiant asserted that the applicant was renting his apartment.
- A letter dated August 1, 1988, from an individual from "Printing" in New York, New York, who attested to the applicant's employment from October 1980 to November 1982 on the letterpress and offset [REDACTED] one color. It is noted that the individual's signature is indecipherable.
- A letter dated August 10, 1988, from an individual from [REDACTED], in New York, New York, who attested to the applicant's employment as a printer from June 1982 to October 1983. It is noted that the individual's signature is indecipherable.

¹ The applicant was assigned alien registration number [REDACTED]. The file has been closed as the applicant failed to attend the requested interview.

- A letter dated July 10, 2001, from [REDACTED] vice president of [REDACTED] in New York, New York, who attested to the applicant's employment since December 1982.
- An additional letter dated April 30, 2004, from [REDACTED] who indicated that the applicant has been employed as an offset printer and manager since 1983.
- A photocopy of his passport, which reflects that a non-immigrant visitor visa was issued to him in Quito, Ecuador on May 30, 1980. The applicant lawfully entered the United States on May 31, 1980.
- A statement indicating that he departed the United States in March 1987 and returned on April 11, 1987.
- An affidavit from [REDACTED] of [REDACTED] owner of [REDACTED] Woodside, New York who attested to the applicant's residence at this address from 1983 to 1986.
- An affidavit from [REDACTED], who indicated that the applicant resided with him from May 1980 to April 1983 at [REDACTED] Jackson Heights, New York.

The applicant also submitted letters and affidavits from several affiants; however, the affidavits have no probative value as the affiants did not attest to the applicant's residence or employment in the United States during the requisite period.

On July 6, 2007, the director issued a Notice of Intent to Deny, which advised the applicant that: 1) 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 in their respective affidavits; 2) the employment letters dated August 1, 1988, and August 10, 1988, from the "Printing" company and [REDACTED], respectively contained an indecipherable signature and the telephone number listed on the letter from the "Printing" company was not in service; 3) the employment at the "Printing" company and [REDACTED] overlapped each other; 4) no evidence of his March 1987 to April 11 1987 absence from the United States was provided; and 5) he indicated on his Application for Immigrant Visa and Alien Registration to have resided in Quito, Ecuador from 1963 to April 1987.

The director, in denying the application on September 10, 2007, noted that the applicant failed to respond to the Notice of Intent To Deny.

On appeal, counsel provides evidence that a response was submitted to the Garden City Office prior to the issuance of the director's decision. The record, however, did not contain the response and the counsel only provided a copy of his coversheet dated August 15, 2007. Accordingly, on February 9, 2009, a facsimile was sent to counsel's office requesting that the documents outlined in his coversheet be submitted to the AAO's office.

Subsequently, counsel submits: 1) an additional affidavit from [REDACTED] attesting to the applicant's employment at [REDACTED] since January 1983; 2) affidavits from acquaintances, [REDACTED] and [REDACTED], attesting to the applicant's residence in the United States since 1980; 3) an additional affidavit from [REDACTED], attesting

to the applicant's residence at her property at [REDACTED], Woodside, New York from 1983 to 1986; 4) copies of the applicant's birth certificate and the death certificate of his mother with English translations; and 5) statements from the applicant explaining and clarifying discrepancies noted in the Notice of Intent to Deny.

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.

The employment letters and affidavit 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. Furthermore, the signatures on the letters from Printing and Garden Copy Center Inc., were indecipherable, thereby giving rise to questions whether each signature is that of a person who was authorized and affiliated with the company.

The applicant's passport serves only to establish that the applicant was a visitor in the United States during 1980. As previously noted, the applicant indicated on his Form G-325A in 1994 that he was residing in Quito Ecuador from December 1980 to April 1987.

The remaining affidavits have no probative value or evidentiary weight as the Form G-325A undermines the credibility of the applicant's claim to have continuously resided in the United States during the period in question. Neither counsel nor the applicant has addressed the Application for Immigrant Visa and Alien Registration, which indicated that the applicant resided in Quito, Ecuador from 1963 to April 1987. These factors raise serious questions regarding the authenticity of the supporting documents submitted with the LIFE application and tend to establish that the applicant utilized the affidavits and letters in a fraudulent manner in an attempt to support his claim of continuous residence in the United States during 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.