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



**U.S. Citizenship
and Immigration
Services**

42
MAY 04 2009



FILE: [Redacted]
MSC 05 132 11172

Office: LOS ANGELES

Date:

IN RE: Applicant: [Redacted]

APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

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, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988 as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, the applicant reiterates his claim of residence in this country for the required period. The applicant asserts that he did not attend school after arriving in the United States in 1980 because he feared being deported if he did so. The applicant provides copies of previously submitted documentation as well as new documents in support of his appeal.

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).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982 to May 4, 1988, the submission of any other relevant document including affidavits is permitted pursuant to 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 "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.* At 80. 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. *Id.*

Even if the director has some doubt as to the truth, if the petitioner 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 petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (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 or petition.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing his continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Act, on or about June 26, 1991. Subsequently, the applicant filed his Form I-485 LIFE Act application on January 24, 2002.

It is noted that the record contains contemporaneous documentation including a letter from the Internal Revenue Service relating to a tax refund check issued to the applicant, tax returns, tax documents, Form W-2, Wage and Tax Statements, receipts, and which tend to establish that the applicant resided in the United States beginning on an indeterminate date in 1987 through the termination of the legalization application period on May 4, 1988. Consequently, the analysis of the applicant’s residence in this country shall be limited to that period from prior to January 1, 1982 up through 1987.

In support of his claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted photocopied identification cards from John’s Corn Dogs, Inc., Plus Fitness Centers, and Video Train. However, the probative value of these identification cards is minimal because all information relating to the applicant on these identification cards is handwritten. Further, the photographs attached to the John’s Corn Dog, Inc. and Plus Fitness Centers identification cards are so dark that it is not possible to identify the individual that is the subject of these photographs as the applicant.

The applicant included an employment letter dated April 7, 1989 that contains the letterhead of John’s Corn Dog, Inc., in Azusa, California and is signed by [REDACTED]. Ms. [REDACTED] stated that this enterprise employed the applicant from September 20, 1986 to an unspecified date when the company ceased operations just before the letter was written. However, [REDACTED] failed to provide the applicant’s address of residence during his employment with this company, the applicant’s duties during his employment, and relevant information relating to the availability of business records reflecting the applicant’s employment as required by 8 C.F.R. § 245a.2(d)(3)(i).

The applicant provided four original photographs depicting him and other individuals that were represented as having been taken in Azusa, California between 1983 and 1985. Nevertheless, these original photographs have no probative value as neither the specific locations depicted in these photographs nor the exact dates such photographs were taken are discernible.

The applicant submitted two affidavits that are co-signed by [REDACTED] and [REDACTED] and dated February 28, 1991 and January 4, 2005, respectively. The record also contains two affidavits dated January 6, 2005 that are signed singularly by [REDACTED] and [REDACTED] as well. In the affidavit dated February 28, 1991, [REDACTED] asserted that the applicant resided with them in their home with free room and board from June 1980 to September 1985. [REDACTED] also acknowledged that the applicant was [REDACTED] brother-in-law and [REDACTED] brother. In the affidavit dated January 4, 2005, [REDACTED] repeat their prior testimony that the applicant resided with them when he first arrived in the United States, but now revised their testimony by stating that the applicant worked for Mr. [REDACTED] in his upholstery business. In his affidavit dated January 6, 2005, [REDACTED] reiterated that the applicant had lived with him and his wife from 1980 to 1985 and that he employed the applicant in his upholstery business during that period. In her affidavit dated January 6, 2005, [REDACTED] repeated her testimony that the applicant resided with her and husband in their home from 1980 to 1985 and that during this time the applicant worked for her husband in his upholstery business. However, neither [REDACTED] nor [REDACTED] provided any explanation as to why they did not mention that the applicant had also worked for [REDACTED] in his upholstery business during that same period he was living in their in home in their original affidavit dated February 28, 1991.

The applicant provided fourteen photocopied receipts ranging in date from February 14, 1981 to May 1, 1985 that were represented as proof that the applicant had worked for [REDACTED] in his upholstery business. Regardless, the probative value of these receipts is severely limited by the fact that the receipts contain only [REDACTED] name and signature without any reference to the applicant.

The applicant included affidavits that are signed by [REDACTED] [REDACTED] [REDACTED], and [REDACTED], as well as an affidavit co-signed by [REDACTED] and [REDACTED]. While all of these affiants attested to the applicant's residence in the United States for the period in question, their testimony was general and vague and lacked sufficient details and verifiable information to corroborate the applicant's residence in this country for the requisite period. In addition, virtually all of these affiants admitted that they were related to the applicant by blood or marriage. Consequently, the probative value of the testimony of these affiants is limited as they have acknowledged that they are members of the applicant's family with a direct interest in the outcome of these proceeding rather than disinterested third party witnesses.

The applicant submitted an affidavit signed by [REDACTED] who declared that he traveled with the applicant to Mexico in June 1987 and returned to this country in that same month. Nevertheless, the probative value of [REDACTED] testimony is severely limited as he failed to attest to the applicant's residence in this country prior to 1987.

The director determined that the applicant failed to submit sufficient evidence demonstrating his residence in the United States in an unlawful status for the requisite period. Therefore, the director concluded that the applicant was ineligible to adjust to permanent residence and denied the Form I-485 LIFE Act application on December 16, 2004.

On appeal, the applicant reiterates his claim of residence in this country for the required period. The applicant asserts that he did not attend school after arriving in the United States in 1980 because he feared being deported if he did so. The applicant's remarks on appeal regarding the sufficiency of evidence he submitted to demonstrate his residence in this country during the period in question have been considered. However, the supporting documents contained in the record lack specific and verifiable testimony to substantiate the applicant's claim of residence in the United States for the period in question. Further, as has been previously discussed, two affiants, [REDACTED] and [REDACTED], revised their original testimony relating to a critical element of the applicant's claim of residence since prior to January 1, 1982 without advancing any explanation for such revision.

The absence of sufficiently detailed supporting documentation and the conflicting testimony cited above seriously undermine the credibility of the applicant's claim of residence in this country for the requisite period, as well as the credibility of the documents submitted in support of such 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. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he has resided in the United States for the requisite period by a preponderance of the evidence as required under both 8 C.F.R. § 245a.12(e) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's reliance upon documents with minimal or no probative value and conflicting nature of testimony contained in the record, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988 as required under section 1104(c)(2)(B) of the LIFE Act. Because the applicant has failed to provide independent and objective evidence to overcome, fully and persuasively, our finding that he submitted falsified documents, we affirm our finding of fraud. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis.

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