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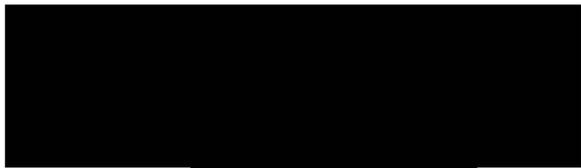
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

L2



FILE: [Redacted]
MSC 02 232 64246

Office: DALLAS

Date: **SEP 09 2009**

IN RE: Applicant: [Redacted]

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. 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 be "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, Dallas, Texas, 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, counsel reiterates the applicant's claim of residence in this country for the required period and asserts that the applicant submitted sufficient evidence in support of such claim. Counsel provides copies of previously submitted documentation in support of the 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 December 7, 1993. At part #33 of this Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant listed “[REDACTED]” in Dallas, Texas from November 1981 to January 1982, “[REDACTED]” in Dallas, Texas from January 1982 to March 1986, and “[REDACTED]” in Snellville, Georgia from March 1986 through at least the end of the requisite period on May 4, 1988. However, at part #36 of this Form I-687 application where applicants were asked to list all employment since entry, the applicant indicated that he was employed as a drywall hanger by “[REDACTED]” in Jonesboro, Georgia from November 1981 to January 1983. The applicant failed to provide any explanation as to how he worked in Jonesboro, Georgia from November 1981 to January 1983 but resided in Dallas, Texas during this period.

Subsequently, the applicant filed his Form I-485 LIFE Act application on May 20, 2002.

In support of his claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted a photocopy of a Texas Department of Public Safety Identity Card that expired on June 17, 1989 and contained a photograph of the applicant. The applicant also included a photocopy of a temporary Texas Department of Public Safety Identity Card that appeared to be issued on September 24, 1984. Both of these documents listed the applicant’s address of residence as “[REDACTED]” in Dallas, Texas. However, the probative value of these documents is limited in that the identity cards are photocopies rather than original documents. “In judging the probative value and credibility of the evidence submitted, greater weight will be given to the submission of original documentation.” 8 C.F.R. § 245a.2(d)(6). Further, it must be noted that the applicant claimed that he was residing at “[REDACTED]” in Dallas, Texas from January 1982 to March 1986 at part #33 of the Form I-687 application rather than the address listed on both Texas Department of Public Safety Identity Cards. Although the applicant claimed that he lived at that same street address, “[REDACTED]” in Dallas, Texas from November 1981 to January 1982 at part #33 of the Form I-687 application,

he listed his apartment number as [REDACTED] rather than [REDACTED]. The applicant failed to provide any explanation for these discrepancies relating to his address of residence and the dates he allegedly resided at these various addresses.

The applicant included a variety of photocopied and original receipts for various dates throughout the requisite period. However, these receipts are of limited probative value as all the information contained in the receipts relating to the applicant is handwritten.

The applicant provided two affidavits both of which are signed by [REDACTED] and dated October 20, 1993 and April 24, 2003, respectively. In the affidavit dated October 20, 1993, Mr. [REDACTED] declared that the applicant lived with him at [REDACTED] in Riverdale, Georgia from November 1981 until January 1982, and that he employed the applicant in an unstated capacity from November 25, 1981 to January 1983. While the dates of employment noted by Mr. [REDACTED] in his affidavit dated October 20, 1993 correspond to dates of employment listed by the applicant at part #36 of the Form I-687 application, [REDACTED] testimony that the applicant lived with him in Riverdale, Georgia from November 1981 to January 1982 directly contradicted the applicant's testimony at part #33 of the Form I-687 application that he lived in Dallas, Texas during this same period. In the affidavit dated April 24, 2003, [REDACTED] revised his prior testimony by stating the applicant resided at '[REDACTED]' in Dallas, Texas from November 1981 to January 1982 and '[REDACTED]' in Dallas, Texas from January 1982 to March 1986. However, [REDACTED] failed to put forth an explanation as to why he had revised his prior testimony and offered conflicting statements regarding the applicant's place of residence from November 1981 to January 1982.

The applicant submitted two affidavits both of which are signed by [REDACTED] and dated December 22, 1992 and May 6, 2002, respectively. In his affidavit dated December 22, 1992, [REDACTED] attested to the applicant's residence at '[REDACTED]' in Dallas, Texas from November 15, 1981 to January 1982 and indicated that he and the applicant worked together. However, [REDACTED] subsequently revised his prior testimony by stating that he and the applicant lived together at '[REDACTED]' in Dallas, Texas from 1981 to June 1985 in the affidavit dated May 6, 2002. [REDACTED] failed to provide any explanation for the conflicting testimony he provided in his two affidavits.

The applicant included an affidavit dated December 22, 1992 that is cosigned by [REDACTED] and [REDACTED] as well as a separate affidavit dated May 6, 2002 that is signed solely by [REDACTED]. In the affidavit dated December 22, 1992, [REDACTED] noted that they had rented a room to the applicant at '[REDACTED]' in Dallas, Texas from January 1982 to March 1986. Nevertheless, [REDACTED] subsequently testified that the applicant lived with him at that same address from November 1981 to June 1985 in the affidavit dated May 6, 2002. Mr. [REDACTED] failed to offer an explanation as to why he offered contradictory testimony regarding the dates the applicant resided with him during the requisite period.

The applicant provided affidavits that are signed by [REDACTED] and [REDACTED], respectively. While all of these affiants attested to the applicant's residence in the United States for the period in question, their testimony lacked sufficient details and verifiable information to corroborate the applicant's residence in this country for the requisite period.

It is noted that [REDACTED], and [REDACTED] all acknowledge that they are biologically related to the applicant in their respective affidavits. 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 this proceeding rather than disinterested third party witnesses.

The applicant submitted an employment affidavit signed by [REDACTED] who stated that he was a sub-contractor who employed the applicant as a sheetrock hanger from 1983 to 1986. Although [REDACTED] testimony corresponds to employment information listed by the applicant at part #36 of the Form I-687 application, [REDACTED] failed to attest to either the applicant's address of residence during his employment or 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 included an employment affidavit that is signed by [REDACTED]. Mr. [REDACTED] declared that he employed the applicant as a sheetrock hanger from March 1986 to July 1989 and listed the applicant's address of residence during this period as "[REDACTED]" in Snellville, Georgia. However, the address listed by [REDACTED] as the applicant's residence does not correspond to the address, "[REDACTED]," in Snellville, Georgia listed by the applicant as his residence in this same period at part #33 of the Form I-687 application. Furthermore, Mr. [REDACTED] did not provide 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 two photocopied envelopes that are postmarked December 3, 1987 and February 16, 1988, respectively and were represented as having been mailed by the applicant to an individual, as well as a greeting card dated November 24, 1987. However, the applicant listed a return address on the envelope postmarked December 3, 1987 that he did not include in the listing of his addresses of residence at part #33 of the Form I-687 application. Moreover, the probative value of these documents is limited in that the envelopes greeting card are photocopies rather than the originals. "In judging the probative value and credibility of the evidence submitted, greater weight will be given to the submission of original documentation." 8 C.F.R. § 245a.2(d)(6).

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 January 30, 2004.

On appeal, counsel reiterates the applicant's claim of residence in this country for the required period and asserts that the applicant submitted sufficient evidence in support of such claim. Counsel's remarks on appeal regarding the sufficiency of evidence the applicant submitted to demonstrate his residence in this country during the period in question have been considered. However, the supporting documents contained in the record do not contain specific and verifiable testimony to substantiate the applicant's claim of residence in the United States for the period in question. In addition, the record contains testimony that did not conform and in some cases conflicted with the applicant's own testimony relating to his claim of residence in this country since prior to January 1, 1982. Moreover, three affiants, [REDACTED] and [REDACTED] all originally testified to a particular set of facts in their initial affidavits but then offered revised and contradictory testimony in subsequent affidavits.

The absence of sufficiently detailed supporting documentation and the conflicting and contradictory 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. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis.

Although the record does not contain sufficient evidence establishing that applicant is rendered ineligible as a result of his criminal history, it must be noted that the record contains copies of the applicant's Federal Bureau of Investigation fingerprint checks dated August 10, 2002 and November 12, 2002, respectively. These documents establish that based upon fingerprint comparison the applicant was arrested by the County Police Department of Lawrenceville, Georgia on May 7, 1988 and charged with separate criminal counts for violating his probation, driving without a license, and driving without a tag. The record does not contain any definitive evidence establishing the final disposition of these criminal charges or the underlying prior criminal conviction that caused the applicant to be charged with a parole violation when he was arrested on May 7, 1988.

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