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



U.S. Citizenship
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FILE: [REDACTED] Office: NEW YORK Date: SEP 24 2009
MSC 02 211 61745

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:
[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

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, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel states that the director erred in not addressing all of the evidence the applicant presented or considering the totality of the circumstances in the applicant's case. Counsel asserts that the applicant has submitted sufficient evidence to establish his continuous residence in the United States.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

An applicant for permanent resident status under section 1104 of the LIFE Act 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 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).

On June 22, 2007, the director issued a notice of intent to deny (NOID) informing the applicant of the Service's intent to deny his LIFE Act application because the applicant had failed to establish the requisite continuous residence. The director noted that the applicant failed to submit sufficient credible evidence to support his application. The applicant was granted thirty (30) days to respond to the notice.

In the Notice of Decision, dated August 17, 2007, the director denied the instant application based on the reasons stated in the NOID. The director stated that the applicant submitted additional evidence in response to the NOID, however, the applicant's response failed to overcome the reasons for denial stated in the NOID.

On appeal, counsel asserts that the applicant has submitted sufficient evidence to establish his continuous residence. Counsel states that the director failed to consider all of the evidence and states that the applicant has been irreparably harmed by the Service's delay in processing his application.

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).

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.

In an effort to demonstrate his continuous residence, the applicant has submitted evidence, including letters and affidavits, mail envelopes and receipts, in support of his Form I-485 LIFE application. The AAO has reviewed the entire record; however, only the evidence for the period from January 1, 1982 through May 4, 1988 will be addressed in this proceeding.

The AAO has reviewed all of the evidence and concludes that the submitted evidence, as it relates to the requisite period, is neither probative nor credible.

The applicant submitted 15 money transfer receipts from Casa De Cambio Delgado, Inc., located at [REDACTED] Corona, New York 11368, reflecting money transfers on behalf of the applicant from March 1983 through 1988. The receipts, however, are questionable. All of the receipts indicate the same telephone number "(718) 565-6700" for Casa De Cambio Delgado, Inc. In particular, two of these receipts, dated March 12, 1984, and July 20, 1984, are questionable

because the "718" area code did not come into existence until September 1984.¹ In addition, a receipt dated February 11, 1988 shows the applicant's address as [REDACTED] New York; however, the applicant indicated on the Form I-687, Application for Temporary Resident Status, submitted with the Form I-485 LIFE application, that he moved to [REDACTED] Bay Shore, New York, in January 1988.

The record contains two U.S. Postal Service money order receipts which show the applicant as the purchaser and [REDACTED] as the payee, however, the dates the money orders were issued do not appear on the copies submitted even though the serial numbers for the money orders are shown in the designated data area of the money order forms. There is also one "Personal Money Order" payable to [REDACTED], dated "6-26-198". Absent a clear date, this money order is of no probative value.

The applicant also submitted several handwritten receipts including receipts issued by Clark Stores on September 15, 1982, Abet Sewing Supplies Corp. on April 23, 1982, and Boro Sign Company on April 17, 1983. A receipt from Atlantic Tile does not show the applicant's name, while a requisition form on paper stock of a "Purchasing Department" bears the applicant's name but does not show the name of the company issuing the requisition.

In addition, the applicant submitted copies of envelopes, purportedly mailed to him at addresses in the United States during the requisite period. Only one envelope, addressed to the applicant at [REDACTED], Flushing, New York, in 1982 is clear. The other envelopes either do not bear postmark dates or do not clearly show a postmark date; others are postmarked outside of the requisite period. The front and back sides of other envelopes have been photocopied on two separate pages which makes it difficult to verify their authenticity. Therefore, they are of little or no probative value.

The applicant submitted a letter from [REDACTED], stating that the applicant had been seen at his office since October 1981. [REDACTED] does not provide an address for the applicant, nor indicate when or how often he saw the applicant during the requisite period. The purported initial visit took place prior to the date for establishing continuous residence and no other appointment dates are stated in the letter. Moreover, this evidence is unreliable as [REDACTED] has been identified as an individual who is known to have prepared similar fraudulent immigration documentation for various applicants.

The applicant provided employment verification letters from [REDACTED], stating that he had been employed there as a dishwasher from July 1981 to March 1984; and, from Marbella Restaurant, stating that he worked there as a kitchen helper from March 1984 to December 1988. In addition, the record reflects that at his interview before an immigration officer on May 22, 1990, the

¹ A review of the Internet site, <http://areacode-info.com>, confirms that the 718 area code was created for use in three of New York City's five counties, Kings (also known as Brooklyn), Queens, and Staten Island, beginning on September 2, 1984. Prior to such date all five counties of New York City utilized the 212 area code with two counties, Manhattan and the Bronx, permanently retaining the 212 area code after December 31, 1984.

applicant could not state the street name where the [REDACTED] was located; and, he could not describe the type of building where the Marbella Restaurant was located. Given the number of years the applicant claimed to have worked at these restaurants, it is highly unusual that he would not be able to identify where they were located or respond to simple questions concerning the building within such a short time after his claimed employment.

The applicant also submitted a letter from Remington's Boultonberry Inc., Bay Shore, New York, which indicates the applicant "is working in our company as cooker since January 1988." The letter is not dated and the signature of the author is unclear.

The applicant did not provide any evidence of employment at any of these restaurants, such as copies of paychecks or W-2 Wage and Tax Statements, to support his claim.

In addition, the letters of employment failed to provide the applicant's address at the time of employment, show periods of layoff, 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 as required under 8 C.F.R. § 245a.2(d)(3)(i). These letters, are therefore, not probative as they do not conform to the regulatory requirements.

In a similar vein, the letters from two members of the clergy do not comport with the regulations concerning attestations made on behalf of an applicant by churches or other organizations. The applicant submitted a letter from [REDACTED], who is identified on the letterhead of the December 22, 1990 letter as pastor of the Our Lady of Lourdes R.C. Church, located in Brooklyn, New York. The letter states that the applicant had been a member of the parish from August 1982 until 1983. A letter dated March 1, 1991 from [REDACTED] Christian Life Center, Incorporated, located in Patchogue, New York, states that the applicant had been a member of the parish community since 1986.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must: (1) Identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to.

The letters from Our Lady of Lourdes R.C. Church, and from the Christian Life Center, Incorporated do not comply with the above cited regulations because they do not: state the address where the applicant resided during attendance ... (membership) ... period; establish in detail that the author knows the applicant and has personal knowledge of the applicant's whereabouts during the requisite period; establish the origin of the information being attested to; and, that attendance (membership) records were referenced or otherwise specifically state the origin of the information being attested to. For this reason, the letters are not deemed probative and are of little evidentiary value.

The applicant has also provided statements from individuals who claim to have knowledge of where the applicant lived during the requisite period, but there is little personal input by the affiants. [REDACTED] and [REDACTED] provided identical forms listing the addresses where the applicant resided in the United States. While [REDACTED] and [REDACTED] state they are “good friends” and the longest period of time they had not seen the applicant is one week, and [REDACTED] states he met the applicant “at a party” and the longest period he had not seen the applicant is two weeks, none of them state when they actually met the applicant or provide any other details concerning their relationship with the applicant. In addition, an affidavit from [REDACTED] states that he and the applicant met while playing soccer in 1981, but [REDACTED] provides no details on how often or where he saw the applicant during the requisite period. Similarly, an affidavit from [REDACTED] merely states that he and the applicant met in 1981 “when he lived in Queens” and that they “continue to visit each other” and “spent time together.” Considering how long each of the affiants claims to have known the applicant, it is remarkable how little information they divulge.

The applicant submitted an affidavit from [REDACTED] who stated that he met the applicant in 1981 when he “started to learn English” and that he “went to school about three years.” However, [REDACTED] did not state where the school was located or provide any other details concerning his relationship with the applicant. It is noted the applicant did not claim or provide any evidence that he had attended school in the United States.

The record contains a letter from [REDACTED] who stated that he met the applicant at a party in 1981, that they have been good friends and visited one another since that time, and that the applicant visited his mother in Ecuador in 1987 and came back to the United States one month later. Mr. [REDACTED] further stated that he opened his own business, [REDACTED] in 1990 and the applicant is one of his best customers. The applicant submitted a subsequent letter from [REDACTED] in which he stated that the applicant has been using the parcel services of [REDACTED] since 1995. It is noted that [REDACTED] J & B Travel, Patchogue, New York, stated that the applicant had been “using our parcel services since 1990.” The applicant did not furnish any receipts to show that he had utilized the services of any parcel service.

The affiants’ statements do not provide detailed evidence establishing the details of their association or relationship, or detailed accounts of an ongoing association establishing a relationship under which the affiants could be reasonably expected to have personal knowledge of the applicant’s residence, activities and whereabouts during the requisite period. 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 these individuals do not provide sufficient detail to establish that they had an ongoing relationship with the applicant that would permit them to know of the applicant’s whereabouts and activities throughout the requisite period.

The record also contains an undated letter from [REDACTED], who stated that the applicant lived at [REDACTED] Bayshore, New York, since January 1988. The affiant does not provide

her own address or telephone number or state how she knows the applicant or how she is aware that he lived at that address. In addition, the applicant furnished a letter from [REDACTED] who stated the applicant "lived at this address" from December 1983 to January 1988. However, Mr. [REDACTED] does not provide the address where the applicant resided during that time. These clearly deficient affidavits are of no probative value and call into question whether they are genuine.

The applicant provided a sworn affidavit from [REDACTED] who described himself as the applicant's landlord when he rented the premises at [REDACTED] Flushing, New York, from January 1981 to December 1983. This address information is the same as the applicant provided on his Form I-687 application.² However, this evidence would only serve to show the applicant's residence for the period from January 1, 1982 through December 1983 and would not establish that the applicant continuously resided in the United States throughout the requisite period.

The applicant submitted a statement saying that he left the United States on July 21, 1987 to visit his ailing mother in Ecuador and returned to the United States on August 13, 1987. In support of this claim, he submitted an affidavit from [REDACTED], residing at [REDACTED] Corona, New York. Mr. [REDACTED] testifies that the applicant left New York for Ecuador on July 21, 1987 and states that he is a "loyal witness of his absence, because he brought letters and money for my family."

The applicant also provided a copy of a January 22, 1991 statement on Ecuatoriana, Empresa Ecuatoriana de Aviacion, letterhead. The letter states in pertinent part:

This is to certify that [REDACTED] figures in the list of passenger who bought an airline ticket to travel on July 21, 1987 on the flight number [REDACTED] from NYC/GUAYAQUIL/QUITO, Ecuador.

The ticket number he bought was: [REDACTED]

This certification is issued request of interested party and it can be used for the purpose that he consider necessary.

very truly,

ECAUTORIANA DE AVIACION [Emphasis added]

[REDACTED]

The applicant also submitted a poor-quality photocopy of airline ticket [REDACTED] which appears to have been issued sometime in June 1987. It is not clear from the statement detailed above whether the author was stating that the applicant bought a ticket "on" July 21, 1987 or that he

² The record also contains a copy of an October 27, 1983 rental receipt on which he lists [REDACTED] [REDACTED] Flushing, New York as his current place of residence.

bought a ticket "to travel on July 21, 1987." Nevertheless, the airline ticket appears to have been altered as the number [REDACTED] is in a different type and it is not aligned with the rest of the numbers shown on the airline ticket. In addition, the signature and content of the January 22, 1991 letter differ markedly from a sample travel verification letter in the record which bears the signature and title of [REDACTED] of Ecuatoriana Airlines. Also, it is unlikely that Mr. [REDACTED] would spell the name of the airline incorrectly as demonstrated above in the highlighted text of the January 22, 1991 letter. This casts doubt on whether the documentation from the airline is authentic; therefore, it is of no probative value.

The above discrepancies and lack of detail, cast considerable doubt on whether the applicant's claim that he entered the United States before January 1, 1982, and resided continuously in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988, is true. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status during the requisite period.

The statements issued on appeal have been considered. However, the AAO does not view the evidence discussed above as substantive enough to support the applicant's claim. Other than the letter from [REDACTED] and the receipts from Clark Stores, Abet Sewing Supplies Corp. and Boro Sign Company, the applicant has not submitted sufficient evidence to support a finding that the applicant entered the United States prior to January 1, 1982, and that he has resided continuously in the United States in an unlawful status since such date and through May 4, 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.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. In view of the substantive shortcomings in the evidence submitted and given the applicant's reliance upon documents with minimal probative value, it is concluded that the applicant has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

The applicant has, therefore, failed to establish that he resided in continuous unlawful status in the United States from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act. Given this, he 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.