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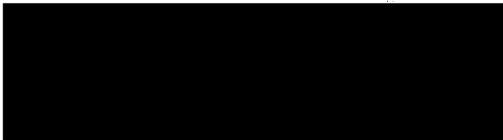
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FILE: [REDACTED] Office: ATLANTA Date: DEC 18 2007

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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Atlanta, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had not demonstrated that he had (1) continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988; or (2) maintained continuous physical presence in the in the United States during the period from November 6, 1986 through May 4, 1988.¹

On appeal, counsel states that the applicant has submitted substantial documentary evidence but that the service did not afford these documents, particularly the affidavits, proper evidentiary weight. He asserts that the applicant has met his burden of proof and has established his eligibility for permanent resident status under the LIFE Act by clear and convincing evidence.

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).

Although Citizenship and Immigration Services (CIS) 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

Counsel for the applicant contends that he first entered the United States in September 1981 without inspection. Counsel further contends that during his first five years in the United States, the applicant lived with relatives and therefore has minimal documentation regarding his presence during that period. In response to Service's request for additional evidence, the applicant submitted the following:

- (1) Statement dated August 1, 2002 by [REDACTED], claiming that the applicant was a boyhood friend and lived with him and his wife at [REDACTED] Arlington, VA [REDACTED] from September 1981 to 1983. Although this statement is entitled "Affidavit," it is not sworn or notarized.
- (2) Envelopes addressed to the applicant in the United States, postmarked September 2, 1981 and December 5, 1987.

¹ It is noted that in the denial, the director specifically states that the application is denied because "you did not pass the Citizenship skill test and could not provide the requested evidence." Upon review of the record, the director's comments regarding the Citizenship Skills test are inappropriate, since the applicant appears to have passed both tests during his interview. Counsel correctly challenges this statement on appeal. As a result, the director's comment on this issue is hereby withdrawn.

It is noted that the Notice of Intent to Deny, issued on June 8, 2005, advised the applicant that the record contained insufficient evidence to demonstrate the applicant's continuous unlawful residence and physical presence during the required period, and thus represents the evidence, or lack thereof, referred to in the denial.

- (3) Affidavit dated December 20, 2002 by the applicant, claiming he lived with friends and then his brother-in-law during the relevant period and thus had no documentary evidence of residence to present. He also claimed to have been paid in cash and thus had no employment records to provide.

On June 8, 2005, CIS issued a Notice of Intent to Deny (NOID) the application. The district director noted that despite the applicant's claim that he continually resided in the United States since 1981, the record did not contain credible evidence to support a finding that the applicant was continually present from before January 1, 1982 through May 4, 1988.

In response, counsel for the applicant submitted documentation, such as tax returns and payroll records, pertaining to the 1990's. No additional documentary evidence pertaining to the relevant period was submitted.

The director denied the application on July 22, 2005 based on the reason set forth in the NOID.

On appeal, counsel submits two new affidavits. One affidavit, dated September 14, 2005 by [REDACTED] claims he has known the applicant for thirty-five years and that they grew up in the same neighborhood in Ghana. He claims that he knows the applicant arrived in the U.S. in 1981, because the applicant located him in 1983 and advised him that he had arrived in 1981. The second affidavit, dated September 14, 2005 by [REDACTED] claims that she has known the applicant for thirty years because they were family friends in Ghana. The affiant claims that she can attest that the applicant arrived in the U.S. in 1981 because he telephoned her in Georgia in 1982 and told her he had been living in Virginia for six months.

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 or 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.

Here, the submitted evidence is not relevant, probative, and credible.

Although the applicant claims he entered the United States in September 1981, he likewise claims that he entered without inspection. As a result, there is no documentary evidence in the form of an

arrival-departure record or stamped passport to verify the exact date of entry. The applicant provided an affidavit from [REDACTED] who claims that the applicant lived with him from September 1981 to 1983. Also submitted into evidence is a letter addressed to the applicant and postmarked on September 2, 1981. At best, this evidence combined may establish that the applicant was physically in the United States in 1981. However, the regulations provide that an applicant prove he continuously resided in an unlawful status from before 1982 through May 4, 1988. This evidence is simply insufficient to establish his continuous residence.

The applicant admits in his affidavit that no documentary evidence exists for this period. He relies on affidavits from Ms. [REDACTED] and Mr. [REDACTED] to show that he entered the United States in 1981 and that he was present in 1982 and 1983 because of his contact with them. As stated above, the inference to be drawn from the documentation provided shall depend on the extent of the documentation. The minimal evidence furnished cannot be considered extensive, and in such cases a negative inference regarding the claim may be made as stated in 8 C.F.R. § 245a.12(e).

While there is no specific regulation which governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements which affidavits from organizations are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information which an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to. See 8 C.F.R. § 245a.2(d)(3)(v).

While these standards are not to be rigidly applied, an application which is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on affidavits which are considerably lacking in such basic and necessary information.

The affidavits submitted in support of this application fall far short of meeting the above criteria. The affidavits mentioned above merely claim they know the applicant was in the United States in 1981 because he told them he had arrived in 1981. The basis of this knowledge is by phone calls or personal conversations 1-2 years after the fact. Furthermore, the affiants did not even reside in the same state as the applicant during 1981, thereby undermining the credibility of their statements. It appears based on the information provided that they had no personal knowledge of the applicant's entry and continuous residence in the United States. 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, in fact, lies, will not suffice. *Id.* at 582.

Given the absence of contemporaneous documentation and the reliance on affidavits which do not meet basic standards of probative value, it is concluded that the applicant has failed to establish, by a preponderance of evidence, that he continuously resided in the United States in an unlawful status since

before January 1, 1982 through May 4, 1988. Therefore, 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.