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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] MSC 02 127 65069

Office: DALLAS

Date: OCT 02 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 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.

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, Dallas, Texas, and is now before the Administrative Appeals Office 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 since before January 1, 1982 through May 4, 1988.

On appeal, the applicant asserts that he has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. The applicant provides additional documentation in support of the appeal.

An applicant for permanent resident status 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; 8 C.F.R. § 245a.11(b).

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 or petitioner 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 or petition.

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).

On a form to determine class membership, which he signed under penalty of perjury on August 6, 1993, the applicant stated that he first entered the United States on October 1, 1981, when he crossed the border without inspection. On his Form I-687, Application for Status as a Temporary Resident, which he also signed under penalty of perjury on August 2, 1993, the applicant stated that he lived at the following addresses in Dallas during the qualifying period: from October 1981 to August 1987 at 2628 Roanoke and from September 1987 to January 1988 at 2911 Clydedale Drive. The applicant did not list any address at

which he lived for the remainder of 1988. The applicant also stated that he worked at Danals, Inc. in Dallas from October 1984 to October 1988, but did not identify any other employment during the requisite period.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant submitted the following evidence:

1. A July 28, 2003 sworn letter from [REDACTED] in which they attested that the applicant lived with them at [REDACTED] from October 1981 to August 1987. In response to the director's Notice of Intent to Deny (NOID) dated January 5, 2005, the applicant provided copies of receipts issued to [REDACTED] and [REDACTED] for mortgage on properties at [REDACTED]. The receipts, all signed by [REDACTED], are dated from April 14, 1980 to December 14, 1984. While the receipts indicate that the [REDACTED] were purchasing this property, the applicant provided no corroborative documentary evidence that he lived with the [REDACTED] during the stated time frame.
2. An August 5, 1993 sworn letter from [REDACTED], in which they stated that they met the applicant in the apartment complex in which they resided. [REDACTED] did not identify the complex, but listed their current address as [REDACTED] in Dallas. [REDACTED] stated that the applicant had resided "here" since October 1981, and that they saw him on a daily basis. The [REDACTED] did not state the circumstances under which they met the applicant.
3. An August 5, 1993 sworn letter from [REDACTED], in which they stated that the applicant had resided here since October 1981. [REDACTED] did not state when or how they met the applicant or how they dated his arrival in the United States.
4. A January 31, 2003 letter from Our Lady of Perpetual help in Dallas, signed by the pastor, Father [REDACTED] certifying that the applicant was an active parish member from 1981 to 1991. Notes in the record reflect that the district office talked with [REDACTED] on February 7, 2003, and that he stated that he had been at the church only since 1997, and that he could not factually verify the applicant's membership as the church did not maintain records.
5. A July 28, 1993 sworn letter from [REDACTED] in which he stated that he met the applicant through his grocery store. [REDACTED] did not identify his store, but stated that the applicant came in once a week to buy his groceries. [REDACTED] further stated that the applicant had resided here since February 1982.
6. A July 28, 1993 sworn statement from [REDACTED] in which he stated that he had known the applicant since January 1982, and that the applicant lived at [REDACTED] in [REDACTED]. [REDACTED] did not state the circumstances of her initial meeting with the applicant or how she dated her meeting with him.
7. A July 28, 1993 sworn letter from [REDACTED] in which she attested that she met the applicant through his aunt, and that he had resided here since February 1, 1982.
8. A June 25, 1993 letter signed by [REDACTED]. [REDACTED] stated that the applicant worked for the food store from October 1984 to October 1988. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must include the alien's address at the time of

employment and whether or not the information was taken from company records. The regulation further provides that if the records are unavailable, an "affidavit form-letter" from the employer stating why the records are unavailable is acceptable, but "shall be signed, attested to by the employer under penalty of perjury, and shall state the employer's willingness to come forward and give testimony if requested." The letter, on plain paper, does not state [REDACTED] position with the company or his authority to provide information on behalf of the company. The letter does also does not identify the applicant's address at the time of his employment with [REDACTED]. The applicant submitted no other documentary evidence, such as paychecks, pay vouchers, or similar documentary evidence to corroborate his employment with [REDACTED].

9. Copies of booking information sheets, showing that the applicant was arrested by the Dallas Police Department following traffic violations on July 18, 1986 and February 9, 1987.

In her January 5, 2005 NOID, the director notified the applicant that the letter from [REDACTED] did not support his claim of residency during the required period as [REDACTED] had not arrived at the church until 1997. In response, the applicant submitted the mortgage receipts discussed above, which, according to counsel, corroborated the information provided by [REDACTED]. However, as the priest stated that no records were kept by the church and he himself arrived after the applicant's purported membership, the letter from the church is not based on church records and therefore cannot be corroborated by mortgage receipts, particularly since they do not belong to the applicant.

In her Notice of Denial (NOD), the director notified the applicant that the district office was unable to verify the information from the [REDACTED], as they had no phone listing. On appeal, counsel states that the [REDACTED] are deceased. However, the record contains no evidence to support counsel's assertion. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The director's NOD also informed the applicant that the district office also could not verify the statements from [REDACTED]. On appeal, counsel states that the applicant has submitted the only documentation available to him at this time. Counsel, citing *Matter of E-M*, further asserts that "due to the fact that most of the documents that could have been available in 1987 and 1988 are lost or destroyed, the employment letters and the affidavits submitted in 1993 should be given weight."

We note first that the applicant did not state that he had evidence that had been destroyed or was now unavailable. As discussed above, the regulation at 8 C.F.R. § 245a.12(e) provides that 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 submitted no contemporaneous evidence to establish his presence and continuous residency in the United States and submitted no additional affidavits or statements that could be verified. The applicant also did not provide updated contact information for individuals who had previously provided information.

Accordingly, the evidence does not establish by a preponderance of the evidence that it was more likely than not that the applicant continuously resided in the United States during the requisite period.

The record reflects that on April 27, 1986, the applicant was arrested by the Dallas Sheriff's Office and charged with burglary of a vehicle. The record contains a search of felony records by the Dallas County

District Clerk, indicating that there were no records of a felony arrest or conviction of the applicant from 1983 through May 6, 2004. However, the record is not clear whether these records also reflect arrests by the Dallas Sheriff's Office. The record also reflects that on August 7, 2002, the applicant was convicted in the Dallas County Criminal Court of driving while intoxicated. (Court docket number [REDACTED]) He was sentenced to 150 days confinement, a fine of \$750 and placed on 24 months probation. The record also reflects that the applicant was arrested for the following traffic violations:

July 18, 1986	Violation of state registration and no driver's license
February 9, 1987	No operator's license
November 15, 1988	Alcohol prohibited
March 21, 1992	Insurance law, no operator's license, registration of motorcycle

While the traffic infractions are not disqualifying, the record does not reflect the final disposition of the offense of burglary of a vehicle, and therefore the record is unclear as to the extent of the applicant's criminal history. However, the applicant's criminal history is not dispositive in this case, as the applicant has not established that he resided continuously in the United States for the required period.

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