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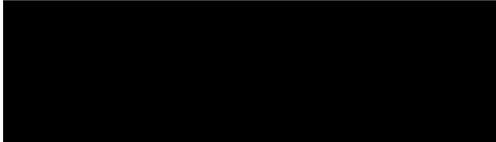
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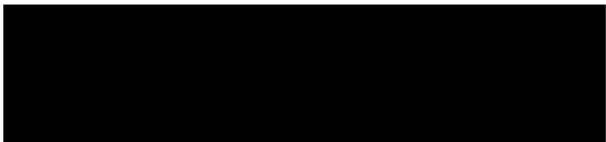


FILE: MSC 02 194 61653

Office: CHICAGO

Date: MAY 25 2007

IN RE: Applicant:



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. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, Chicago, Illinois, 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 the director was incorrect in denying his application as he has proved by a preponderance of the evidence that he has been illegally and physically present in the United States from January 1, 1982 through May 4, 1988. Counsel submits a brief 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 November 26, 1990, the applicant stated that he first arrived in the United States in 1982 (when he was 12 years old). On his Form I-687, Application for Status as a Temporary Resident, which he signed under penalty of perjury on December 19, 1990, the applicant stated that he lived at [REDACTED] in Chicago from 1982 until the date of his Form I-687 application. The applicant also stated that he worked for [REDACTED]

at [REDACTED] in Cicero, Illinois from 1982 to January 1990. The applicant identified [REDACTED] as his uncle, and stated that his work was "house work" and "child support."

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 November 23, 1990 notarized statement from [REDACTED] which he certified that the applicant "was living in my apartment at his current address from February of 1982 to January of 1990." [REDACTED] identified his address as [REDACTED] in Cicero, and the applicant's address as [REDACTED] in Chicago. [REDACTED] stated that the applicant did not contribute to the household expenses, but that he helped with the miscellaneous household needs. In a separate statement dated the same day, [REDACTED] stated that the applicant also took care of [REDACTED] children and did not attend school. The applicant submitted no documentation to establish that [REDACTED] rented or owned the apartment at [REDACTED] during the requisite period. The applicant also submitted no documentation to corroborate his residency at the location during the qualifying period.
2. A December 18, 1990 notarized statement from [REDACTED] in which she certified that she had known the applicant for approximately eight years, and that she also knew him by the name of [REDACTED]. [REDACTED] did not indicate the circumstances of her initial acquaintance with the applicant.
3. A December 1, 1990 sworn statement from [REDACTED] in which he stated that he lived at [REDACTED] in Cicero, that the applicant lived at [REDACTED] and that he knew that the applicant went to Mexico on August 18, 1987 and came back on September 22, 1987. [REDACTED] reiterated this statement in a December 19, 1990 sworn declaration. [REDACTED] did not state the basis of his knowledge regarding the applicant's absence, his relationship to the applicant, or that the applicant was present and residing in the United States during the qualifying period.

In response to the director's Notice of Intent to Deny (NOID) dated July 21, 2003, the applicant submitted:

4. A January 26, 2002 affidavit from [REDACTED] in which he stated that the applicant lived at his house at [REDACTED] in Chicago in December 1981. This information conflicts with that of the applicant on his form to determine class membership, where he stated that his first entry into the United States was in 1982. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).
5. A January 25, 2002 sworn statement from [REDACTED] in which he stated that he had known the applicant since December 1981. [REDACTED] did not provide the address where the applicant resided during their acquaintance.
6. An April 8, 2003 affidavit from [REDACTED] in which she stated that the applicant was her husband's relative, and that he had lived with her family from February 1982 to January 1990 at [REDACTED] in Chicago.

7. A January 25, 2002 notarized letter from [REDACTED] in which he stated that he had known the applicant since January 1982, and that they had a long “friendship relationship” over the years [REDACTED] did not state the address where the applicant resided during their friendship.
8. An October 24, 2002 notarized statement from [REDACTED] in which he certified that he was the previous owner of the building located at [REDACTED] in Chicago, and that he employed the applicant as a janitor from 1983 to 1988. [REDACTED] did not indicate the source of the information that he relied upon in providing the information regarding the applicant’s employment or the applicant’s address at the time of his employment. 8 C.F.R. § 245a.2(d)(3)(i). Further, the applicant submitted no documentation to corroborate that [REDACTED] owned a building at the stated location during the stated time frame. Additionally, the applicant did not claim to have worked for [REDACTED] or a [REDACTED] from 1983 to 1988. According to the applicant on his Form I-687 application, he worked as a household helper for his uncle and also took care of his cousins during this period. The applicant submitted no corroborative evidence that he worked for [REDACTED] during the qualifying period. *Matter of Ho*, 19 I&N at 591.
9. A July 28, 2003 sworn letter from [REDACTED] in which he certified that he had known the applicant since March 1983 when the applicant lived at [REDACTED] in Chicago and that the applicant was a friend of [REDACTED] son-in-law.
10. A July 20, 2003 sworn letter from [REDACTED] in which she stated that she had known the applicant since July 1984 when he lived at [REDACTED] in Chicago and that the applicant had continued to be a close friend of her husband.
11. A 1989 Form W-2, Wage and Tax Statement, issued to the applicant by [REDACTED]. Copies of pay stubs from [REDACTED] with dates beginning in August 1988, a copy of a 1988 Form W-2, Wage and Tax Statement, issued to the applicant by [REDACTED], and copies of Form 1040A, U.S. Individual Income Tax Return, for 1988 and 1989.

The applicant also submitted copies of a Form 1099, Miscellaneous Income, and a copy of a money order from Civic Federal Savings Bank. However, the dates on these documents are illegible. Other documentation submitted by the applicant is subsequent to the qualifying period and therefore is not probative in establishing his continued residency in the United States from prior to January 1, 1982 to May 4, 1988.

Counsel asserts on appeal that the director’s statement that the applicant submitted no corroborative proof of his employment with [REDACTED] was a fatal error in his analysis of the applicant’s evidence. However, as the applicant submitted conflicting evidence regarding his employment status during the qualifying period, the unsupported statement of [REDACTED] is insufficient to prove by a preponderance of the evidence that he employed the applicant. *See id.* Counsel further argues that the employment was at a residential building, and that “the mere requirement of one (1) janitorial employee such as Petitioner [sic] could result in payment by other than paycheck.” Nothing in the record supports counsel’s assertions. 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).

By his own admission, the applicant did not arrive in the United States until 1982. Accordingly, he is statutorily ineligible for benefits under the LIFE Act, which requires that he establish that he lived in the United States in an unlawful status continuously from *prior to* January 1, 1982 through May 4, 1988.

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