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U.S. Citizenship
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FILE:

MSC 02 022 65280

Office: LOS ANGELES

Date: JUN 08 2006

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:

Self-represented

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.


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 Acting District Director, San Francisco, 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 from before January 1, 1982 through May 4, 1988.

On appeal, the applicant asserts that due to his illegal status, he worked odd jobs and was paid in cash. The applicant states that he is unable to obtain verification of said employment as most of the employers are no longer in business. The applicant reiterates his explanation regarding his visits to Tijuana, Mexico.

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. 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 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 his Form I-687 application the applicant indicated: 1) his spouse was residing in Mexico; 2) his children's dates of birth as December 28, 1980, February 7, 1981, March 24, 1983, October 6, 1985, May 1, 1989 and October 7, 1990; and 3) his only absence from the United States as July 8, 1987 to August 12, 1987.

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

- Affidavits notarized July 6, 1993 from [REDACTED] of Sylmar, California, and [REDACTED] of Panorama City, California who attested to the applicant's residence in Van Nuys, California since May 1980. The affiants indicated that they have been good friends with the applicant since that time.
- An affidavit notarized June 30, 1993 from [REDACTED] of Missions Hills, California, who attested to the applicant's residence in Van Nuys, California since May 1980. [REDACTED] indicated that she has been a good friend with the applicant since that time.
- An affidavit notarized March 2, 1997 from [REDACTED] of Watsonville, California, who attested to the applicant's residence at [REDACTED] from April 15, 1979 to November 19, 1979.
- An affidavit notarized September 5, 2001 from [REDACTED] of San Fernando, California, who indicated that she has known the applicant since May 1980. [REDACTED] based her knowledge on the matter as she claimed that the applicant worked with her late husband at a meat market.

In a declaration dated September 26, 2001, the applicant asserted in part:

I hereby declare that I have lived in the United States since May 1980 and not been out of the United States for more than 2 weeks at a time. The first time I left was when I left to Mexico to see my family because of an emergency on July 8, 1987 at which time I returned to the United States on August 12, 1987. The second time and to the best of my recollection was in 1992 and I was detained by the Immigration Service and deported to Mexico.

The director, in his Notice of Intent to Deny dated May 13, 2004, advised the applicant that the affidavits submitted did not contain sufficient information and corroborative documentation for the proclaimed years. The applicant was also advised of a contradiction between his one absence from the United States and the dates of birth for three of his children. Specifically, the applicant indicated that he had only departed the United States in 1987 and that his spouse has never visited the United States. However, the record reflects that his spouse gave birth to three of his children during the period the applicant claimed to have been in the United States.

The applicant, in response, asserted in part:

On May 4, 2004, I was interviewed by and [sic] immigration officer, from my understanding I was asked about my longest exit from the United States which occurred on July 8, 1997. He then began to ask me how my children were conceived. I then told him that my wife would come to Tijuana for a visit and remain there for a period of three to four days. I would leave the U.S. three or four times a year to see her. During this [sic] occasional meetings our 2 children were conceived.

* * *

We would stay with the family friend, [REDACTED] at his home located in Colonia Presidente. Unfortunately, this friend has passed away and not able to write a statement.

The applicant indicated that his eldest child was born on December 28, 1971 not in 1980. As evidence, the applicant submitted a copy of his daughter's birth certificate, which reflects a date of birth of December 28, 1971.

Here, the submitted evidence is not relevant, probative, and credible. The applicant claimed that he has been in the United States since May 1980, but only provides affidavits from four affiants who merely attested to his character and friendship. The AAO does not view these affidavits as substantive enough to support a finding that the applicant entered and began residing in the United States before January 1, 1982 through May 4, 1988. [REDACTED] asserted that the applicant worked with her late husband "at a meat market." The applicant, however, did not claim on his Form I-687 application any employment at a meat market during the requisite period. [REDACTED] attested to the applicant's residence in April 1979; however, the applicant did not enter the United States until May 1980. The remaining affiants all claim to have known the applicant since May 1980, but provide no actual address for the applicant. In addition, the applicant claimed no residence in "Van Nuys" on his Form I-687 application during the requisite period. The applicant has not provided evidence such as a lease agreement, rent receipts, or utility bills to corroborate his claim of residence during the requisite period. The inability to produce contemporaneous documentation of residence raises questions regarding the credibility of the claim.

The applicant's statement regarding his absences from the United State has been considered. However, it is unclear why the applicant failed to list *all* of his absences on the Form I-687 application. Item #35 of the application clearly indicates, "list most recent absence first and list absences back to January 1, 1982." As previously noted, the applicant indicated on two separate occasions that he only departed the United States *once* since his arrival in the United States. These facts taken together along with the applicant's failure to disclose his other departures are a strong indication that the applicant may have been outside the United States beyond the period of time allowed by regulation.

Given the virtual absence of contemporaneous documentation, and the insufficiency of the affidavits, it is concluded that the applicant has failed to establish, by a preponderance of evidence, continuous residence during the requisite period. 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.