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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:

MSC 01 362 60052

Office: CHICAGO

Date:

JUN 21 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:



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 District Director, Chicago, Illinois, and is now before the Administrative Appeals Office on appeal. The case will be remanded for further action and consideration.

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 during 1988.

On appeal, counsel asserts that the applicant had submitted in response to the Notice of Intent to Deny sufficient documentation establishing continuous residence in the United States during 1988. Counsel provides copies of previously submitted documents 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. 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).

The director in his Notice of Intent to Deny dated November 18, 2002, informed the applicant that he had submitted sufficient evidence to establish he had resided in the United States since before January 1, 1982 through 1987. The applicant was also informed that he had failed to submit evidence to establish his continuous residence from January 1, 1988 through May 4, 1988. The applicant, in response, submitted the following:

- A notarized letter dated December 7, 2002 from [REDACTED] of Winthron Harbor, Illinois, who attested to the applicant's presence in Waukegan, Illinois during 1988. [REDACTED] asserted that in May 1988, the applicant came to him seeking employment, but he was unable to accommodate the applicant at the time.
- A letter dated December 5, 2002 from [REDACTED] president of the finance committee of the Holy Family Parish in Waukegan, Illinois, who indicated that he had served as president of the parish counsel from 1975 to 1995, and indicated that the applicant was a minister of hospitality from 1983 to 1989.
- A letter dated November 25, 2002 from [REDACTED] pastor of the Holy Family Parish, who indicated that the parish records reflect that the applicant had been a member of the parish since August 1978, and served a minister of hospitality from 1983 to April 1989.

The applicant also submitted a Certificate of Baptism issued on December 19, 1988 and a letter from [REDACTED] who attested to the applicant's presence at the Holy Family Parish in December 1988. These documents, however, have no probative value or evidentiary weight as the incidents occurred subsequent to the requisite period. The affidavit from [REDACTED] serves only to establish the applicant's presence in the United States in May 1988. The remaining documents, coupled with the affidavit from [REDACTED] attesting to the applicant's residence at her home from October 1987 to February 1990, tends to corroborate his claim of residence in the United States from January 1, 1988 through May 4, 1988.

The district director has not established that the information in this evidence was inconsistent with the claims made on the application, or that it was false information. As stated in *Matter of E--M--*, *supra*, when something is to be established by a preponderance of evidence, the applicant only has to establish that the asserted claim is probably true. That decision also points out that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. The documents that have been furnished may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the period in question.

Finally, a review of the record reveals that the applicant departed the United States in July 1982 and did not return until June 1983. This prolonged absence was not addressed by the director in his Notice of Intent to Deny. Accordingly, the case is remanded for the issuance of a Notice to Deny addressing this matter and for the entry of a new decision in accordance with the foregoing. If the new decision is adverse, it shall be certified to this office.

ORDER: This matter is remanded for further action and consideration pursuant to the above.