

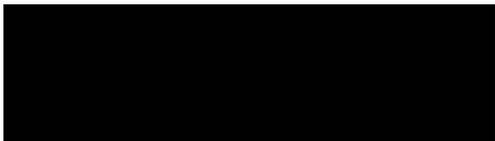
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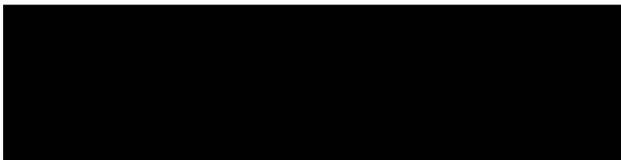


FILE: [REDACTED] Office: CHICAGO Date: JUN 22 2006
MSC 02 071 61623

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. 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 (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, counsel asserts that the applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel provides copies of previously submitted documents along with additional documents in support of the appeal.

It is noted that the director, in denying the application, did not address the evidence furnished in response to the Notice of Intent to Deny, and did not set forth the specific reasons for the denial pursuant to 8 C.F.R. § 103.3(a)(1)(i). As such, the documentation submitted throughout the application process will be considered on 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).

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:

- A California driver license issued on December 8, 1987, which listed the applicant's address as [REDACTED]
- A California identification card issued on May 21, 1986.
- A temporary vehicle identification issued by the California Department of Motor Vehicles in 1987.
- An affidavit notarized June 4, 1990 from [REDACTED] of Los Angeles, California, who indicated that he and the applicant resided together from September 1981 to March 1983 at [REDACTED]. [REDACTED] asserted that the rental agreement and utilities bills were listed in his name.
- Notarized affidavits from [REDACTED] of Los Angeles, California, [REDACTED] of Granada Hills, [REDACTED] of Van Nuys, California and [REDACTED] of Sepulveda, California, who attested to the applicant's presence in the United States since 1981.
- Several envelopes postmarked during 1987 and 1988 addressed to the applicant's Los Angeles residence at [REDACTED]
- Several earnings statements dated June 16, 1986 through August 16, 1986 and September 7 and 21, 1986 from [REDACTED]
- A letter dated May 31, 1990 from [REDACTED], president of Monterey Auto Sales Co., Inc., in Los Angeles, California, who indicated that the applicant was a part-time employee in maintenance and detail during 1983.
- An affidavit from [REDACTED] of Sun Valley, California, who indicated that he has known the applicant since childhood and attested to the applicant's entry into the United States in July 1981.
- An affidavit notarized June 4, 2002 from [REDACTED] of Brawley, California, who attested to the applicant's residence with the [REDACTED] family at [REDACTED] from September 1981 to March 1983. [REDACTED] based his knowledge on having visited the applicant once a month at the address.

The director issued a Notice of Intent to Deny dated June 2, 2003, informing the applicant that the record did not contain sufficient evidence to establish his continuous residence in the United States since before January 1, 1982 through May 4, 1988. Specifically, the applicant had not established that he was physically present in the United States in 1982, 1984 and 1985.

Counsel, in response, asserted that the applicant had establish his physical presence in the United States during the years in questions with several affidavits from individuals who had direct personal knowledge. Counsel stated that the applicant was 15 years old in 1982, and did not have any utilities bills or any other invoices in his name. Here, the submitted evidence is not relevant, probative, and credible. Counsel provided copies of documents that were previously submitted along with:

- An additional affidavit from [REDACTED] who reaffirmed his statement to have had visited the applicant at [REDACTED] while the applicant resided with the [REDACTED] family from September 1981 to March 1983. [REDACTED] asserted that the applicant resided with him at [REDACTED], Calexico from January 1984 to February 1986.

- An affidavit from [REDACTED] of Imperial, California, who indicated that she has known the applicant since 1984, and attested to the applicant's residence with [REDACTED] at [REDACTED], Calexico. [REDACTED] asserted that [REDACTED] was her friend and "I frequently visited her because we have a long friendship."

An affidavit from [REDACTED] of Brawley California, who indicated that she was a co-worker of the applicant at El Taconazo Restaurant Bar in Brawley, California in 1984. [REDACTED] asserted that the applicant was employed for four months in 1984 and returned in 1985.

- An affidavit from [REDACTED] of Calexico, California, who indicated that he has known the applicant since 1984, and attested to the applicant's residence "with his aunt [REDACTED] at [REDACTED], Calexico, CA 9221 in the years 1984 thru 1986. I visit his aunt [REDACTED] on a regular basis, I have knowledge that [the applicant] was residing with her."

- An affidavit from [REDACTED] of Brawley, California, who indicated that he has been friends with the applicant for over 30 years. [REDACTED] asserted that the applicant "was residing with his aunt [REDACTED] at [REDACTED] Calexico from 1984 through 1986. [REDACTED] asserted that he visited the applicant at this address on a regular basis.

On appeal, counsel asserts that the applicant's presence in the United States during 1982, 1984 and 1985 has been established by several affidavits of support. Counsel states that the affidavits describe the applicant's whereabouts in the United States, his personal and professional activities, as well as his relationship with these individuals all of whom came into contact with the applicant in the United States during the 1980s. Counsel asserts in part:

One of the many significant affidavits is that of [REDACTED] who is Petitioner's United States Citizen uncle. [REDACTED] continuously visited the Petitioner in California from September 1981 to March. Furthermore, [REDACTED] lived with the Petitioner from January 1984 to February 1986 in California.

Counsel submits: 1) a social security statement from the Social Security Administration dated October 18, 2004, which reflected the applicant's earnings since 1988; 2) a 1988 wage and tax statement from Cetec Corp. in Sun Valley, California; 3) a Western Union Mailgram dated July 10, 1986; and 4) a medical bill dated August 8, 1986 from the Avalon Clinic in Avalon, California.

The statements of counsel on appeal regarding the amount and sufficiency of the applicant's evidence of residence have been considered. However, the applicant submitted evidence, including contemporaneous documents, which *only* tends to corroborate his claim of residence in the United States since before January 1, 1982 to March 1983, and from May 1986 to May 4, 1988. The AAO does not view the affidavits from the

affiants submitted as substantive enough to support a finding that the applicant continuously resided in the United States from April 1983 to April 1986 as contradicting information has been presented. Specifically:

1. [REDACTED] in his subsequent affidavit, indicated that the applicant resided with him at [REDACTED] Calexico from January 1984 to February 1986. However, the applicant, on his Form I-687 application, claimed no residence in Calexico during the requisite period. Further, [REDACTED] amended affidavit is questionable at best, as he did not attest to this period of residence in his previous affidavit.
2. [REDACTED] and [REDACTED] also attested to the applicant's residence at [REDACTED] Calexico from 1984 to 1986. As noted above, the applicant did not claim to have resided in Calexico during this timeframe.
3. [REDACTED], [REDACTED] and [REDACTED] each claimed to know [REDACTED] but referred to the wrong gender when describing the affiant. As previously noted, counsel, on appeal, refers to [REDACTED] as the "petitioner's United States Citizen uncle."
4. [REDACTED] in her affidavit, attested to the applicant's employment at El Taconazo Restaurant Bar in Brawley, California in 1984 and 1985. The applicant, however, did not claim this employment on his Form I-687 application during the requisite period

In addition, the affidavits from [REDACTED] and [REDACTED] all attest to the applicant continuous residence in the United States since 1981, but provides no address for the applicant, and no detail regarding the nature or origin of their relationships with the applicant or the basis for their continuing awareness of the applicant's residence

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

Given the contradicting information arising from the documentation provided by the applicant, it is determined that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982 and resided in this country in an unlawful status *continuously* through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, 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.