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U.S. Citizenship
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Services

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FILE:

MSC 01 342 60224

Office: LOS ANGELES

Date: SEP 06 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 District Director, Los Angeles, California, and is now before the Administrative Appeals Office 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 since before January 1, 1982 through May 4, 1988.

On appeal, the applicant states that he did not keep employment documents because he did not expect to apply for immigration benefits. The applicant states that, in the event his documentation is insufficient to establish his eligibility for the LIFE Act, he requests a "personal interview" in which to "give my reasons and explain my situation."

It appears that the applicant is requesting oral argument. The regulations provide that the requesting party must explain in writing why oral argument is necessary. Furthermore, Citizenship and Immigration Services (CIS) has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, the applicant identified no unique factors or issues of law to be resolved. Moreover, the written record of proceedings fully represents the facts and issues in this matter. Consequently, the request for oral argument is denied.

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(2)(c)(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 petitioner 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 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).

The applicant alleges that he first entered the United States illegally in June 1981, when he crossed the border without inspection.

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 June 28, 1983 letter from [REDACTED] the president of CKD Engineering and Manufacturing, in which he stated that the applicant worked for the company from June 5, 1986 to May 1, 1992. Mr. [REDACTED] did not indicate in what capacity the applicant worked and did not indicate that the source of the information provided was from official company records. See 8 C.F.R. § 245a.2(d)(3).
2. An undated notarized statement from [REDACTED] who stated that he has known the applicant since 1981, and that they are friends. However, Mr. [REDACTED] did not indicate that the applicant was present and residing in the United States for the requisite period.
3. A June 28, 1993 notarized statement from [REDACTED] in which he stated that the applicant worked for the company from February 1982 to May 1986. Mr. [REDACTED] did not indicate the nature of the applicant's duties with the company or that the information regarding the applicant's employment was taken from official company records. *Id.*

On appeal, the applicant also submits the following documentation:

4. A September 10, 2004 sworn statement from [REDACTED], the owner of [REDACTED], in which he stated that the applicant worked for the company from June 1981 to January 1982. Mr. [REDACTED] stated that the applicant told him he was 16-years old at the time, and that he worked mounting tires and cleaning the employees' work areas. Mr. [REDACTED] did not indicate that the information he provided was taken from company records. We note that the applicant had not previously indicated that he was employed during this time period.
5. A September 8, 2004 sworn statement from [REDACTED] in which he stated that the applicant lived with him at [REDACTED] in Anaheim, California from June 1981 to January 1987, and contributed to the household expenses. The applicant submits no evidence that Mr. [REDACTED] lived at the address indicated during this stated time frame.
6. A September 8, 2004 sworn affidavit from [REDACTED] who stated that he met the applicant in June 1981 while they were attending the same church and that they have remained friends.

As discussed above, evaluation of the applicant's claim is a factor of both the quality and quantity of the evidence provided. While affidavits in certain cases can effectively meet the preponderance of evidence standard, the statements and affidavits submitted by the applicant do not contain sufficient details to corroborate the applicant's claim of residency during the required period. The employment letters submitted by the applicant do not indicate that they were based on official company records, and the record does not reflect the source of the information relied upon by the writers when providing the information. With the exception of Mr. [REDACTED], none of the employers indicated the compensation received by the applicant and

none indicated how he was compensated. The applicant submitted no copies of paychecks or pay stubs to further verify his employment at these companies, or that his employment occurred during the time frames claimed. The applicant submitted no contemporaneous documentation of his presence and residency in the United States during the requisite period.

Given the absence of any contemporaneous documentation and the lack of sufficiently detailed letters of employment, it is concluded that the applicant has failed to establish continuous residence in the United States for the required period.

On April 5, 1993, the Anaheim Police Department arrested the applicant and charged him with violations of the following sections of the California Vehicle Code (VC):

20002	Failure to comply with the VC requirements pertaining to property damage
14601.1	Driving when privilege suspended or revoked
21453	Violation of red circular signal
12500(a)	Driving without a valid driver's license
12951	Driving without a being in possession of a valid driver's license

He was convicted on undetermined charges, sentenced to two days in jail, 36 months probation, fined and ordered to make restitution. The applicant submitted a letter from the Orange County Superior Court indicating that no criminal records were found and that all misdemeanor records are destroyed five years after the final disposition.

It is unclear whether the applicant was convicted of more than one misdemeanor. The applicant should have requested copies of the destroyed records from the California Department of Justice, Bureau of Criminal Investigation. We are unable to determine whether the applicant is ineligible for adjustment of status under the LIFE Act under 8 C.F.R. § 245a.18(a)(1) with the present record. Accordingly, the applicant is ineligible for permanent residence under section 1104 of the LIFE Act.

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