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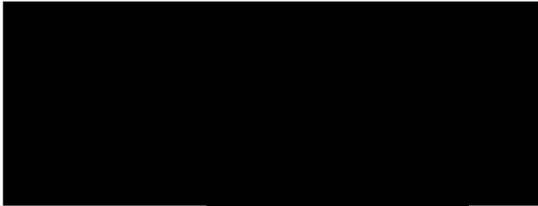
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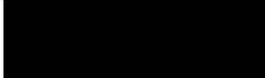


U.S. Citizenship
and Immigration
Services

L



FILE:



MSC 02 239 61534

Office: DALLAS

Date:

SEP 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:



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 "R. 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, Dallas, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 provides additional documentation along with 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).

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

- An undated statement from [REDACTED] of Forth Worth, Texas, who indicated that he has known the applicant since 1981 and has remained in contact with the applicant since that time.

- An undated statement from [REDACTED] of Dallas, Texas, who indicated that he has known the applicant since 1981 and has remained in contact with the applicant since that time.
- A statement dated May 14, 2004 from [REDACTED] of Forth Worth, Texas, who indicated that he has known the applicant since 1984, and attested to the applicant's current residence.
- An affidavit notarized May 7, 2002 from [REDACTED] of Forth Worth, Texas, who indicated that he has known the applicant since 1985, and attested to the applicant's current residence.
- An affidavit notarized May 6, 2002 from [REDACTED] of Forth Worth, Texas, who indicated that she has known the applicant since 1986 and has remained in contact with the applicant since that time. Ms. [REDACTED] attested to the applicant's current residence.
- An employment affidavit notarized September 29, 1990 from [REDACTED] owner of [REDACTED] Resturante in Dallas, Texas, who indicated that the applicant has been in his employ as a dishwasher since March 1981.
- An additional affidavit notarized September 29, 1990 from [REDACTED] who attested to the applicant's residence at [REDACTED] Dallas, Texas since March 1981. Mr. [REDACTED] indicated that he was the landlord.
- An affidavit notarized September 10, 1993 from [REDACTED] a sister-in-law, who attested to the applicant's residence in Forth Worth, Texas since January 1987.
- An affidavit notarized July 31, 1993 from [REDACTED] of Forth Worth, Texas, who attested to the applicant's residence in Forth Worth, Texas since February 19, 1985. The affiant based his knowledge on the applicant being a regular customer.

The applicant also submitted copies of photographs the applicant claimed were taken in 1987 and 1988 and a letter from [REDACTED]. The photographs have no identifying evidence that could be extracted which would serve to either **prove or imply** that photograph was taken in the United States and during the requisite period. The letter from [REDACTED] has not probative value or evidentiary weight, as the affiant did not sign it.

In response to a Request for Additional Evidence dated April 7, 2003, the applicant asserted that Mr. [REDACTED] informed him that he had no employment or lease records to provide because he no longer owned the restaurant and had no records for his rental properties. The applicant stated that he had no further evidence to submit as he received his wages in cash and he did not file income tax returns with the Internal Revenue Service.

In response to the Notice of Intent to Deny dated August 14, 2003, the applicant reasserted the veracity of his employment claim and residence. The applicant provided copies of documents that were previously submitted along with a receipt from Radio Shack dated November 13, 1983. The applicant also submitted two receipts dated during the requisite period, however, as the applicant's name was not listed, the receipts have not probative value.

On appeal, the applicant submits an additional affidavit notarized March 16, 2004 from [REDACTED]. Mr. Ornelas reaffirmed the applicant's employment as a dishwasher from March 1981 to September 1990 at [REDACTED] Restaurant in Dallas, Texas.

In this instance, the applicant submitted evidence, which tends to corroborate his claim of residence in the United States during the requisite period. 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 requisite period.

The documentation provided by the applicant supports by a preponderance of the evidence that the applicant satisfies the statutory and regulatory criteria of entry into the United States before January 1, 1982, as well as continuous unlawful residence in the country during the ensuing time frame of January 1, 1982 through May 4, 1988, as required for eligibility for legalization under section 1104(c)(2)(B)(i) of the LIFE Act.

Accordingly, the applicant's appeal will be sustained. The district director shall continue the adjudication of the application for permanent resident status.

Finally, the record reflects that on July 22, 1988, the applicant was apprehended by the Border Patrol in Del Rio, Texas and charged with illegal entry, a violation of Title 8, USC 1325, a misdemeanor. On July 27, 1988, the applicant was convicted of this offense and sentenced to serve 90 days in jail. Docket no. [REDACTED] While this conviction does not render the applicant ineligible pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a), the AAO notes that the applicant does has a misdemeanor conviction.

ORDER: The appeal is sustained.