



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: San Francisco

Date: SEP 08 2006

MSC 03 227 60865

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:

[REDACTED]

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. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

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, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The district director determined that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel asserts that the applicant has provided sufficient and credible evidence to establish continuous residence in the United States from prior to January 1, 1982 to May 4, 1988. Counsel provides copies of previously submitted affidavits in support of the applicant's claim of residence in this country for the requisite period.

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. *See* § 1104(c)(2)(B) of the LIFE Act and 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 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to 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. Here, the submitted evidence is relevant, probative, and credible.

The applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (Act), on or about November 17, 1993. Subsequently, on May 15, 2003, the applicant filed his Form I-485 LIFE Act application.

In support of his claim of residence in the United States since prior to January 1, 1982, the applicant submitted an employment affidavit, an affidavit attesting to his absence from the United States in 1987, and fourteen affidavits of residence. The testimony contained in the supporting evidence is consistent with the claims and testimony made by the applicant on the Form I-687 application.

In the notice of intent to deny issued on May 25, 2004, the district director questioned the veracity of the applicant's claimed residence in the United States by indicating that he needed to submit additional evidence to support this claim. However, it must be noted that the district director failed to cite a specific deficiency or discrepancy in the applicant's supporting evidence. The applicant was granted thirty days to respond to the notice.

In response, the applicant included copies of previously submitted affidavits as well as four new affidavits from individuals who had already provided documentation in support of the applicant's claim of residence for period in question.

The district director determined that the applicant had failed to submit sufficient evidence establishing his continuous residence in this country since prior to January 1, 1982, and, therefore, denied the application on September 2, 2004. In the notice of denial, the district director noted that the affiant who supplied the employment affidavit contained in the record had not stated the applicant's age in attesting to his employment from 1981 to 1989. The district director also noted that the applicant had submitted only third-party affidavits that were not supported by other credible documentation. However, the fact that an affiant failed to state the applicant's age in an employment affidavit does not impair the probative value of this document. Further, the record contains no evidence to demonstrate that any effort was made to verify the testimony contained in the affidavits submitted by the applicant despite the fact that all affiants have provided their address and five have listed their phone numbers as well. Moreover, pursuant to *Matter of E--M--*, 20 I&N Dec. 77, 79-80 (Comm. 1989), affidavits in certain cases *can* effectively meet the preponderance of evidence standard, and the district director cannot disregard and must consider such evidence whether or not it is unaccompanied by other forms of documentation.

The statements of counsel on appeal regarding the amount and sufficiency of the applicant's evidence of residence have been considered. In this instance, the applicant submitted evidence, including affidavits, 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--*,

id, when something is to be established by a preponderance of evidence, the proof submitted by the applicant has to establish only that the assertion or 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 establishes by a preponderance of the evidence that he 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. Consequently, the applicant has overcome the basis of denial cited by the district director.

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

ORDER: The appeal is sustained.