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FILE:

MSC 03 235 60223

Office: CHICAGO

Date:

APR 19 2007

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. 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, Chicago, 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 contends that the director did not properly consider the evidence submitted by the applicant, which demonstrates that the applicant did reside continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

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. To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony. 8 C.F.R. § 245a.12(f). 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).

While there is no specific regulation which governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements which affidavits are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information which an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to. See 8 C.F.R. § 245a.2(d)(3)(v).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must be on employer letterhead stationery, if the employer has such stationery, and must include the following:

- (A) Alien's address at the time of employment;
- (B) Exact period of employment;
- (C) Periods of layoff;
- (D) Duties with the company;
- (E) Whether or not the information was taken from official company records; and
- (F) Where records are located and whether the Service may have access to the records.

The regulation further allows that if official company records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and explaining why such records are unavailable may be submitted in lieu of meeting the requirements at (E) and (F) above.

Here, the submitted evidence is not sufficiently relevant, probative, and credible to meet the applicant's burden of proof.

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 letter dated on October 24, 1990 from a representative of the Brookwood Country Club in Wood Dale, Illinois stating that the applicant was employed there from April 1982 to February 1986 and resided at [REDACTED] in Schiller Park, Illinois.
- An affidavit notarized on September 26, 1990 from [REDACTED] of Chicago, Illinois stating that he has known the applicant since 1980 and knows that the applicant has used the names [REDACTED] and [REDACTED].
- An affidavit notarized on September 26, 1990 from [REDACTED] of Chicago, Illinois stating that he knows the applicant has resided in the United States since at least 1981.

- An affidavit notarized on September 26, 1990 from [REDACTED] of Chicago, Illinois stating he knows as a friend that the applicant has resided in the United States since at least 1980.
- An affidavit notarized on September 26, 1990 from [REDACTED] of Chicago, Illinois stating that he knows that the applicant has resided in the United States since at least 1980.
- A letter dated May 7, 1990 from [REDACTED] of the St. Josaphat Church in Chicago, Illinois stating that the applicant has been a member of the parish since 1981.
- A letter dated May 7, 1990 from [REDACTED] President of Gina Imports, Ltd., stating that [REDACTED] worked for the company as a “warehouse man” from February 1987 through December 1989 and resided at [REDACTED] in Chicago, Illinois.
- A letter dated May 7, 1990 from [REDACTED] Personnel Secretary at the O’Hare Airport Holiday Inn, stating that [REDACTED], then residing at [REDACTED] in Schiller Park, Illinois, was employed there as a busboy from February 1980 to March 1982, and [REDACTED] then residing at [REDACTED] in Chicago, Illinois, was employed there as a busboy from April 1986 to September 1987.
- Savings account book from Security Federal Savings and Loan Association dated March 5, 1986 and showing transactions from March to October of that year.
- A Form W-2 Wage and Tax Statement showing the applicant worked for OK Inn Food & Beverage Inc. in 1982.
- Envelopes postmarked in November 1980 bearing the applicant’s return address at [REDACTED] in Schiller Park, Illinois.
- An earnings statement from OK Inn Food & Beverage Inc. dated in 1980.
- Birth, health, and school records showing the presence of the applicant’s daughters in the United States during the qualifying period.

On October 22, 2004, the director issued a Notice of Intent to Deny (NOID) listing the evidence submitted by the applicant and finding that it did “not meet the criteria established to permit the Service to substantiate your claim to being physically present in the United States during the prescribed periods.” The director cited the regulation at 8 C.F.R. § 103.2(b) as containing the evidentiary criteria not met by the applicant.

In response to the NOID, counsel asserted that the director could not deny the application without pointing to specific reasons why the affidavits and other evidence submitted by the applicant were

not credible. Citing decisions such as *Vera-Villegas v. INS*, 330 F.3d 1222 (9<sup>th</sup> Cir. 2003), and *Lopez-Alvarado v. Ashcroft*, 381 F. 3d 847 (9<sup>th</sup> Cir. 2004), counsel pointed out that the applicant is not required to show his presence in the United States from before January 1, 1982 through May 4, 1988 by contemporaneous documentation, but can prove residency through the credible testimony of witnesses. Counsel argued that the affidavits and other documents submitted by the applicant were sufficient to meet his burden of proof.

In the decision to deny the application dated January 10, 2005, the director found that “there has been no evidence of the existence of primary or secondary evidence as outlined [in 8 C.F.R. § 103.2(b)] to establish [the] claim.” The director noted that the affidavits and other documentation submitted by the applicant had been considered, but were determined to be insufficient to establish eligibility by a preponderance of the evidence.

On appeal, counsel contends that the director failed to provide a complete basis for the denial. Again citing several judicial decisions, counsel asserts that the director erred in rejecting the applicant’s evidence without providing “a clear and direct explanation of persuasive reasons for such rejection.” Counsel states “the alleged lack or inadequate amount of documentary evidence is not a sufficient basis for rejecting [the applicant’s] claim if oral and written testimony is otherwise sufficient.” Counsel asserts that the applicant’s “oral and written testimony, in the form of numerous affidavits, is sufficient to replace the lack of documentary evidence” of residency, and the director erred in rejecting the application on the basis of lack of or inadequate documentary evidence.

Upon review of all the evidence in the record, the AAO determines that the submitted evidence is not sufficiently relevant, probative, and credible to meet the applicant’s burden of proof. The director incorrectly cited the regulation at 8 C.F.R. § 103.2(b) as containing the evidentiary standard applicable to LIFE Act cases. As stated above, although the LIFE Act 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). Likewise, the AAO concurs with counsel that the director’s decision lacks specificity as to the deficiencies in the applicant’s evidence that constitute the basis for the denial the application. However, the evidence of residency submitted by the applicant contains inconsistencies and fails to comply with regulatory evidentiary guidelines. Specifically:

- The applicant has failed to submit sufficient evidence showing that he worked under the name [REDACTED] as claimed. In cases where an applicant claims to have met any of the eligibility criteria under an assumed name, the applicant has the burden of proving that the applicant was in fact the person who used that name. 8 C.F.R. § 245a.2(d)(2)(i). Affidavits submitted to demonstrate that an applicant used an assumed name must identify the affiant by name and address, state the affiant’s relationship to the applicant and the basis of the affiant’s knowledge of the applicant’s use of the assumed name. 8 C.F.R. § 245a.2(d)(2)(ii).

- [REDACTED] of the Holiday Inn states in her letter that [REDACTED] and [REDACTED] worked for the O'Hare Airport Holiday Inn, but she does not indicate that these two individuals were in fact the same person. [REDACTED] states in his affidavit that he is the applicant's friend and knows that the applicant worked under the name [REDACTED], but fails to state an adequate basis for this knowledge. The applicant has indicated that he worked under the name [REDACTED] because he could not obtain a Social Security number in his own name. However, the record shows that the applicant previously and subsequently worked under a Social Security number associated with the name [REDACTED] which is a form of the applicant's actual name.
- The representative of Brookwood Country Club indicates that during the time the applicant worked there—from April 1982 to February 1986—he resided at [REDACTED] in Schiller Park, Illinois. However, on his Form I-687, Application for Status as a Temporary Resident, the applicant listed this address as his residence only until November 1982. The applicant had three additional residences during the period it is claimed that he was employed at Brookwood.
- The affidavits from [REDACTED] and [REDACTED] do not list the applicant's addresses during the period of the affiants' acquaintance with him, or state an adequate basis for the affiants' knowledge that the applicant continuously resided in the United States during the entire qualifying period.
- The letter from [REDACTED] of [REDACTED] does not indicate whether or not the information in the letter was taken from official company records, where the records are located and whether USCIS may have access to the records.

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).

Although the applicant has submitted some credible evidence showing presence during portions of the qualifying period, the applicant has failed to present sufficiently credible and probative evidence of residency to adequately address the discrepancies noted herein. These discrepancies raise doubts about the applicant's residency during significant portions of the period. They also raise questions concerning the authenticity of the remaining documents the applicant has presented in attempt to continuous residence in the United States prior to January 1, 1982 through May 4, 1988.

The regulation at 8 C.F.R. § 245a.12(e) provides that “[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods.” Preponderance of the evidence is defined as “evidence which as a whole shows that the fact sought to be proved is more

I&N Dec. 316, 320, Note 5 (BIA 1991). When viewed in its totality, the evidence in the record demonstrates that it is probable that the applicant resided in the United States from before January 1, 1982 through May 4, 1988.

Given the specific insufficiencies and discrepancies in the evidence, the AAO determines 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 since that time through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b).

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