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U.S. Citizenship
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FILE: [REDACTED]
MSC 02 108 61535

Office: LOS ANGELES

Date: APR 20 2007

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. 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, Los Angeles, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The director denied the application for lack of prosecution on September 29, 2004, indicating that the applicant had only provided a "portion" of additional evidence requested by the director at the time of the applicant's interview. The director then issued a decision to deny the application on December 3, 2004, stating that the applicant had failed to submit a rebuttal to the proposed grounds of denial listed in a previously issued Notice of Intent to Deny (NOID). The record does not contain a NOID.

On appeal, counsel explains that the applicant is appealing the decision of December 3, 2004. Counsel asserts that the applicant has submitted sufficient evidence of residency in the years disputed by the director, and the director's decision should be reconsidered.

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 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).

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).

Here, the submitted evidence is relevant, probative, and credible.

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:

- An affidavit notarized on November 3, 2004 from [REDACTED] of Winnetka, California stating that he knows that applicant as an organist/keyboardist and witnessed the applicant's physical presence in the United States in the years 1981, 1982, 1984 and 1986.
- An affidavit notarized on November 2, 2004 from [REDACTED] of La Verne, California stating that he knew the applicant when they both worked as part-time music teachers in Glendale from 1982 to 1986.
- An affidavit notarized on November 1, 2004 from [REDACTED] of North Hollywood, California stating that the applicant was his organ mentor and that he knows the applicant was present in the United States from 1981 to 1986.
- An affidavit notarized on November 2, 1989 from [REDACTED] stating that he has known the applicant since 1981 when they worked together as musicians at the Bulakena Restaurant in Los Angeles, California.
- An affidavit notarized on October 30, 1989 from [REDACTED] stating that she has known the applicant for the past ten years and knows that he is a very good musician and organist.
- The birth certificate of the applicant's daughter [REDACTED] born in California on November 10, 1987.
- Bank statements dated in 1984, 1987 and 1988 and a bank check indicating that the applicant had been a customer at the Bank of America since 1984.

- Utility bills dated in 1987 and 1988 bearing the applicant's name and address.
- Various letters addressed to or from the applicant and postmarked in 1981, 1982, 1985, 1986, and 1987 respectively.
- Three airline tickets bearing the applicant's name and showing travel within the United States on three separate dates (February 1, 1980; June 11, 1983; September 13, 1985).
- A receipt from the Philippine Consulate in Los Angeles, California issued to the applicant on April 23, 1985.
- Medical receipts bearing the applicant's name and apparently issued in 1981 and 1982.
- A "Hire Slip" dated November 9, 1981 from the "Organ Exchange" indicating that the applicant was hired as an "independent contractor" beginning on November 10, 1981.
- A certificate dated May 6, 1981 from the "Organ Exchange" stating that the applicant is entitled to 24 weeks of enrollment in an organ lesson program, and bearing the dates of lessons received with a completion date of November 6, 1981.

On September 29, 2004, the director issued a decision stating that the application was deemed abandoned and denied for lack of prosecution because the applicant had failed to submit additional evidence as requested on a Form I-72 issued to the applicant at the time of his interview on April 24, 2003. The record contains a copy of this request, in which the applicant was requested to provide proof of residency in the United States during the years 1981, 1982, 1984 and 1986.

In a decision to deny the application dated December 3, 2004, the director stated that the applicant was previously issued a NOID and afforded 30 days to explain discrepancies or rebut any adverse information as set forth in the NOID, but had failed to submit a rebuttal.

On appeal, counsel explains that the applicant is appealing the decision of December 3, 2004. Counsel asserts that the applicant has submitted sufficient evidence of residency in the years disputed by the director, and the director's decision should be reconsidered.

The exact reason for denial of the application is not specified in the director's decision of December 3, 2004. The decision incorporates by reference reasons listed in the NOID, but there is no NOID in the record. The record does contain the director's previous decision to deny the application for lack of prosecution on September 29, 2004, which references a Form I-72 request for additional evidence issued to the applicant on April 24, 2003. Based on the information in these documents, the AAO determines that the director's decision to deny the application December 3, 2004 was based on the perceived insufficiency of the applicant's evidence of residency for the years 1981, 1982, 1984 and 1986, as indicated on the Form I-72.

The regulation at 8 C.F.R. § 245a.20(a)(2) requires that when an adverse decision is proposed, an applicant for LIFE legalization must be notified of the intention to deny the application and the basis for the proposed denial, and granted a period of 30 days to respond to this notice. Although the director did not issue a notice to the applicant that meets all the requirements of this regulation, the Form I-72 request issued to the applicant on April 24, 2003 did inform the applicant that USCIS found his evidence of residency for certain years insufficient. The AAO determines that the applicant has not been unduly prejudiced by this error, as the applicant has had ample opportunity to submit additional evidence of residency and to address evidentiary issues on appeal.

Upon review of all the evidence in the record, the AAO determines that the submitted evidence is sufficiently relevant, probative, and credible to meet the applicant's burden of proof. 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).

The applicant has submitted evidence that presents a consistent account of the applicant's residency in the United States from before January 1, 1982 through May 4, 1988. The evidence shows that the applicant has found employment as a musician, and worked in this capacity as an independent contractor since 1981. Although the applicant has not submitted employment records of the kind often presented by other applicants for permanent residence under LIFE Act, the applicant has submitted other significant evidence demonstrating his residence in the United States during the qualifying period. This evidence includes receipts, bank statements, utility bills, and affidavits from acquaintances that contain consistent information concerning the applicant's residences and employment. Even though these affidavits are missing some of the elements required by regulation, when all evidence submitted by the applicant is viewed in its totality, it is probative of the applicant's residency during the qualifying period. The director did not cite any inconsistencies in the evidence submitted by the applicant or between this evidence and other evidence in the record.

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 probable than not." Black's Law Dictionary 1064 (5th ed. 1979). See *Matter of Lemhammad*, 20 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.

The applicant has met his burden of proving continuous residence in an unlawful status in the United States from before January 1, 1982 through May 4, 1988. Accordingly, the applicant has established eligibility to adjust to Legal Permanent Resident status under section 1104 of the LIFE Act.

ORDER: The appeal is sustained. The application is returned to the director for adjudication consistent with the foregoing.