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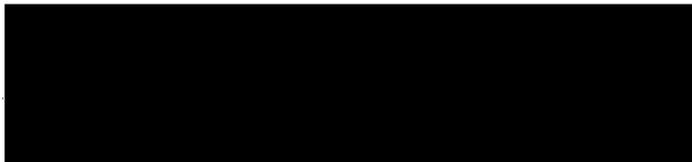
Office: CHICAGO

Date: APR 27 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, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded for further action and consideration.

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 asserts that the director erred in determining that the evidence submitted by the applicant was insufficient, and that the director "imposed an unreasonable burden of proof on the applicant." Counsel provides a brief in support of the appeal.¹

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 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. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

¹ Different counsel represented the applicant on this appeal.

In an attempt to establish continuous unlawful residence since before January 1, 1982, as claimed, the applicant furnished evidence including nine affidavits and statements of residence, three employment letters, seven purchase receipts, two envelopes addressed to the applicant in the United States during the requisite period, a letter from a travel agency and a letter from the applicant's church. 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 contemporaneous documents, 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 proof 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.

However, the application may not be approved as the record now stands. The record also reflects that the applicant was charged by the Cicero, Illinois Police Department with two charges of driving under the influence of alcohol (DUI) and driving on the wrong side. The record contains a May 26, 2004 statement from the clerk of the court certifying that on April 9, 2001 an order to the charge of DUI was "terminate satisfied." This statement is inadequate, however, as it does not contain the initial results of the judicial proceeding against the applicant and appears to address only one of the offenses for which he was charged. The record does not reflect the disposition of the remaining charges. In a request for evidence (RFE) dated May 25, 2004, the director instructed the applicant to submit certified court dispositions for "each and every arrest and charge." However, the director did not address, either in the Notice of Intent to Deny or the Notice of Decision, the applicant's failure to provide all of the documentation requested in the RFE. On remand, the director shall address the applicant's criminal history to include final disposition of all offenses of which he was charged. If the director issues a new decision that is adverse to the applicant, it shall be certified to this office for review.

The record reflects that the applicant filed a new Form I-687, Application for Status as a Temporary Resident, on December 22, 2005, which has not been finally adjudicated by the district office. That application is not at issue in this decision.

ORDER: This matter is remanded for further action and consideration pursuant to the above.