



U.S. Citizenship
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FILE:

MSC 02 246 66568

Office: CHICAGO

Date: AUG 16 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. Any further inquiry must be made to that office.

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 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 to December 1984.

On appeal, counsel asserts that the applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel submits copies of documents that were previously provided 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 throughout the application process:

- Two earnings statements for the periods ending June 9, 1985 and July 14, 1985 and wage and tax statements for 1984 through 1988 from [REDACTED] in Chicago, Illinois. The wage

and tax statements are addressed to the applicant's Chicago, Illinois residences at [REDACTED]

- A letter dated May 5, 1991, from [REDACTED] Manager of [REDACTED], who indicated that the applicant has been employed as a baler operator since December 8, 1984. It is noted that Cometco Corporation is a subsidiary of [REDACTED].
- A letter dated April 12, 2002, from [REDACTED] human resource assistant of [REDACTED] in Chicago, Illinois, who attested to the applicant's employment at [REDACTED] & Metal since December 8, 1984.
- Copies of envelopes postmarked in 1985 and 1986 addressed to the applicant's Chicago Illinois residences at [REDACTED]
- A copy of an envelope postmarked in 1987 addressed to the applicant's Chicago, Illinois residence at [REDACTED]
- A rent receipt dated October 31, 1986 for property at [REDACTED]
- A letter dated May 11, 1993, from [REDACTED], president of [REDACTED], Inc. in Los Angeles, California. The affiant attested to the applicant's employment as a helper in the bakery from January 1982 to August 1984 at [REDACTED], California.
- A notarized affidavit from [REDACTED] of Calumet, Illinois, who attested to the applicant's continuous residence in the United States since his arrival.
- A notarized affidavit from [REDACTED] of Chicago, Illinois, who indicated that he has been acquainted with the applicant since 1983.
- An affidavit notarized May 24, 1992, from [REDACTED], previous owner of [REDACTED] Chicago, Illinois, who attested to the applicant's residence at the location from October 1984 to October 30, 1985.
- An additional affidavit dated May 15, 1993, from [REDACTED] landlord of [REDACTED] Chicago, Illinois, who indicated that the applicant was a tenant from November 1985 to October 1986.
- A notarized affidavit from Fernando Mones of Chicago, Illinois, who indicated that he has been acquainted with the applicant since December 8, 1984, and attested to the applicant's departure from the United States from January 23, 1988 to February 13, 1988. The affiant asserted that he is a co-worker of the applicant.
- A notarized affidavit from [REDACTED] California, who attested to the applicant's residences in Artesia, California from December 1981 to October 1984 and in Chicago, Illinois since October 1984. The affiant asserted that the applicant resided in his home in Artesia, California from December 1981 to October 1984.
- A telephone bill from Illinois Bell dated October 19, 1986, addressed to the applicant at [REDACTED]
- Union dues receipts dated June 5, 1985 and July 9, 1985.
- Utility bills dated in 1987.

In his Notice of Intent to Deny issued on April 21, 2003, the director advised the applicant that he had "failed to submit documents from the following years, 1982, 1983, 1986 and 1988." The director noted that the affidavits and other documentation had been taken into consideration; however, it was determined that the applicant had not established by a preponderance of evidence that she met the requirements to adjust his status under the LIFE Act.

Counsel, in response, submitted copies of documents previously provided along with:

- An additional letter dated May 8, 2003, from [REDACTED], president of [REDACTED] who reaffirmed the applicant's employment from January 1982 through August 1984 at [REDACTED] California. The affiant asserted that he was unable to furnish wage and tax statements or check stubs to supplement his letter due to the length of time that had lapsed.
- Additional envelopes postmarked from May 1985 to December 1985 addressed to the applicant at [REDACTED]
- Additional envelopes postmarked in 1986 and 1987 addressed to the applicant at [REDACTED]
- An envelope postmarked in April 1988 addressed to the applicant at [REDACTED] Chicago, Illinois.
- Several earnings statements for the periods ending January 19, 1986, March 16, 23 and 30, 1986, April 6, 13, 20 and 27, 1986, May 4, 11, 18 and 25, 1986, June 1, 8, 22, and 29, 1986, July 27, 1986, August 17 and 31, 1986, and September 7 and 14, 1986 from Cometco Corporation.
- A telephone customer's receipt dated August 6, 1986 and several telephone billing statements dated September 18, 1986, November 19, 1986, January 19, 1987, February 19, 1987, May 19, 1987, July 19, 1987, September 19, 1987, December 19 1987 and February 19, 1988, which listed the applicant's address as [REDACTED]
- Several rent receipts dated July 31, 1986, September 1986, September 30, 1986 and March 2, 1987 for [REDACTED]
- Union due receipts dated January 6, 1986, April 7, 1986, May 6, 1986, June 10, 1986, July 7, 1986, July 15, 1987, August 10, 1987, September 8, 1987 and December 10, 1987.
- A Form 1099 from Security Federal Savings and Loans of Chicago for 1986 and 1987
- Correspondence from MCI dated September 21, 1986, October 21, 1986, November 21, 1986, January 21, 1987, February 21, 1987, May 21, 1987 and June 21, 1987 addressed to the applicant at [REDACTED]
- Medical documents dated November 12, 1986 from Thorek Hospital & Medical Center.
- Utility bills dated in August 1986, January 1987, May 1987, June 1987 and July 1987 addressed to the applicant at [REDACTED]
- A statement dated May 2, 1988, from the National Bank of Chicago addressed to the applicant at [REDACTED] regarding a certificate of deposit that was issued on December 15, 1987.

The director, in denying the application determined that the applicant had not "presented no primary or secondary evidence" to establish his continuous residence and physical presence in the United States from January 1, 1982 to December 1984.

The affidavits from [REDACTED] and [REDACTED] have little probative value as neither affiant provided an address for the applicant during the period in question. Further, [REDACTED] cannot attest to the applicant's residence in the United States since 1981 as he only has been acquainted with the applicant since 1983.

The statements of counsel on appeal regarding the amount and sufficiency of the applicant's evidence of residence have been considered. Furthermore, counsel's contention that the applicant's inability to produce additional evidence of residence for the period in question was the result of the passage of time is considered to be a reasonable explanation in these circumstances.

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 applicant provided affidavits from individuals, all whom provide their current addresses and/or telephone numbers and indicate a willingness to testify in this matter. The record contains no evidence to suggest that the district director attempted to contact [REDACTED] to verify the authenticity of the employment documents submitted. The district director has not established that the information in these affidavits was inconsistent with the claims made on the application, or that such information was false. 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.

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.