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U.S. Citizenship  
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Services

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FILE:



Office: LOS ANGELES

Date:

FEB 27 2007

MSC 02 127 61947

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, Los Angeles, and is now before the Administrative Appeals Office 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 asserts that the applicant's testimony was enough to prove eligibility and the evidence submitted by the applicant and the applicant's oral testimony was not considered.

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).

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 November 6, 2004 from [REDACTED] of West Coast United stating that the applicant "worked for me off and on, from 1982 to 1989, on a part time basis."
- A letter dated April 26, 2003, and a letter dated April 30, 1996, from [REDACTED] stating that she has known the applicant since the year 1981 when the applicant did yard work for her and her husband "about twice a month at [REDACTED], in Downey, California."
- An affidavit notarized on April 17, 2003 from [REDACTED] attesting that he has known the applicant "since the year of 1981 when he was doing some construction work at my home located in the City of Downey."
- A letter dated May 10, 1996 from [REDACTED] owner of Del Ray Home Builders in Downey, California, stating that "in the past years, [the applicant] has been a temporary part-time employee since 1981."

On July 14, 2004, the director issued a Notice of Intent to Deny (NOID) stating that the "affidavits/statements [the applicant] submitted do not contain enough objective evidence to which they can be compared to determine whether the attestations are credible, plausible, or internally consistent with the record." The director also determined that the employment letters submitted by the applicant did not meet the requirements for employment verification letters found in 8 C.F.R. § 245a.15(b)(1) and 8 C.F.R. 245a.2(d)(3).

The record does not contain evidence that the applicant responded to the NOID, but counsel contends on appeal that the applicant responded and submitted the letter from [REDACTED] that is listed above.

In the decision to deny the application dated November 2, 2004, the director stated that the applicant failed to submit a rebuttal to the NOID and denied the application.

On appeal, counsel asserts that neither the evidence submitted by the applicant in response to the NOID, nor the applicant's oral testimony was considered in denying the application.

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. As noted above, to meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.12(f). The applicant stated on his Form I-687 that he resided at [REDACTED] in Fresno, California from May 1981 to January 1989, but has submitted no independent evidence to support this claim. Each of the employment letters submitted by the applicant,

in addition to not meeting all the regulatory requirements for employment verification letters, lack detail concerning the exact periods of employment. These letters indicate only that the applicant worked on occasion for each employer in and after the year 1981. On his Form I-687, the applicant did not list any of these employers specifically, indicating only that he worked for "various employers at various locations" from May 1981 to February 1993. The applicant has the burden of proving *continuous* residence for the period of before January 1, 1982 through May 4, 1988, and the evidence submitted by the applicant is of minimal probative value in showing that the applicant's residency was continuous throughout this entire period.

Given the insufficiency of the applicant's 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.