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U.S. Citizenship
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FILE:



MSC 02 226 60464

Office: DALLAS

Date: FEB 27 2007

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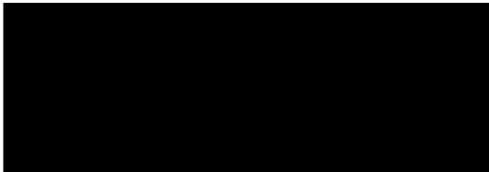
Applicant:



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, Dallas, Texas, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the applicant has provided sufficient evidence to demonstrate that he is eligible for adjustment of status under the LIFE Act, and that the director failed to “properly define a ‘preponderance of the evidence,’ has failed to ‘conduct an examination of each piece of relevant evidence, and has failed to ‘challenge the credibility of the applicant or of the authenticity of the documents’ with specific reasoning.” Counsel provides a brief and additional documentation 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. Section 1104(c)(2)(B) of the LIFE Act; 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 petitioner 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 Citizenship and Immigration Services (CIS) 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

On a form to determine class membership, which he signed under penalty of perjury on June 25, 1990, the applicant stated that he entered the United States without inspection in July 1981. The applicant did not admit to any absences from the United States during the qualifying period. The Form I-687, Application

for Status as a Temporary Resident, included in the record is incomplete as the applicant did not complete pages 2 and 3 of the form, including a failure to provide information regarding his employment and residences during the requisite period.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant submitted the following evidence:

1. A June 1, 2004 affidavit from [REDACTED], in which he stated that he has known the applicant since January 1981. The affiant stated that he lived with the applicant's brother in Dallas and spent several Christmases with the family. [REDACTED] did not state that his acquaintance with the applicant began in the United States or that the applicant resided in the United States during the qualifying period.
2. An April 14, 2002 affidavit from [REDACTED], in which he stated that he has known the applicant for 35 years, that the affiant came to the United States in 1986, but that the applicant came to the United States in 1981.
3. An April 15, 2002 affidavit from [REDACTED], in which he stated that he has known the applicant since 1981, when the applicant came to the United States.
4. An April 16, 2002 affidavit from [REDACTED], in which he stated that he has known the applicant since 1981, when the applicant came to the United States.
5. An April 22, 2002 sworn statement from [REDACTED], in which he stated that he has known the applicant since [REDACTED]'s birth, and that the applicant has been in the United States since 1981.
6. A March 8, 2003 affidavit from [REDACTED], in which he stated that he has known the applicant since June 1981, and that they met through his brother.
7. A June 24 affidavit from [REDACTED], in which he stated that he was the owner of Professional Roofing Systems, and that the applicant had worked for him since August 1981. The letter does not indicate the source of the information regarding the applicant's employment or the applicant's address at the time of his employment. 8 C.F.R. § 245a.2(d)(3)(i). The applicant submitted no corroborative documentary evidence, such as paychecks, pay stubs, pay vouchers or similar documentary evidence, to corroborate his employment with this company. The director noted in her decision that the district office was unable to verify the existence of this company. Counsel did not address this issue on appeal and submitted no additional documentation to establish the existence of Professional Roofing Systems.
8. A June 25, 1990 affidavit from [REDACTED], in which she stated that she knew the applicant as a friend of the family at [REDACTED] in Dallas from January 1 to 1982 to January 12, 1982 and at [REDACTED] in Dallas on January 12, 1983. It is unclear whether the affiant was attesting to these addresses as those at which the applicant lived or where she resided during the stated periods. The affiant also did not indicate the circumstances of, or how she dated, her initial acquaintance with the applicant.
9. A June 25, 1990 affidavit from [REDACTED], in which she stated that she has known the applicant as a good friend at the following addresses in Dallas, Texas: [REDACTED] from [REDACTED]

January 1983 until January 1984; [REDACTED] from January 1984 to February 1988, and #214 from February 1988 to February 1990. It is unclear whether the affiant was attesting to these addresses as those at which the applicant lived or where she resided during the stated periods. The affiant also did not indicate the circumstances of, or how she dated, her initial acquaintance with the applicant.

While affidavits in certain cases can effectively meet the preponderance of evidence standard, the applicant submitted affidavits and statements only from long-term friends and acquaintances. The applicant submitted no documentation from objective or disinterested parties. The district office was unable to corroborate the applicant's employment during the qualifying period. The applicant submitted no contemporaneous documentation of his presence and residency in the United States during the required period. Given this absence of contemporaneous documentation and the lack of objective evidence to support his claim, it is concluded that the applicant has failed to establish continuous residence in the U.S. for the required period.

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