



U.S. Citizenship
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Services

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FILE:

MSC 02 245 60190

Office: LOS ANGELES

Date:

JAN 09 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:

SELF-REPRESENTED

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

On appeal, the applicant states that he is submitting evidence to prove residency and submits copies of documents already in the record.

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 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).

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).

In the Notice of Intent to Deny (NOID), the director observed that the applicant submitted four affidavits that lacked "corroborative evidence" to substantiate the claims made therein. The director also noted that the applicant testified at his interview that, from 1981 to 1988, he saw his wife in Mexico only during absences from the United States in 1984 and 1988, but indicated on his Form I-485, Application to Register Permanent Resident or Adjust Status, that he has children who were born in Mexico in July 1986 and August 1987 respectively.

In a response to the NOID, the applicant asserted that he did not depart from the United States in 1984 and 1988, but his wife visited him in the United States and returned to Mexico to have their children. The director determined that this explanation, as well as additional affidavits and other evidence submitted by the applicant, were not sufficient to resolve the inconsistency in the record and meet the applicant's burden of proof that he entered the United States before January 1, 1982 and continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

Upon review of the record in its entirety, the AAO finds the evidence submitted by the applicant is not relevant, probative and credible.

On his I-687, Application for Status as a Temporary Resident, the applicant failed to list any employment from 1981 to 1988, and listed only one residence in the United States—at [REDACTED] in Sylmar, California—beginning in 1985. The applicant submitted a third party affidavit from [REDACTED] in which Ms. [REDACTED] indicates that the applicant lived at her residence in Northridge, California from December 1981 to August 1983. Ms. [REDACTED] further states that upon leaving her residence, the applicant moved in with his brother in Northridge, California "and has been living with him ever since." An affidavit from the applicant's brother indicates only that the applicant resides with him at the applicant's address of record. The record thus lacks credible and probative evidence of the applicant's place of residence from August 1983 to May 4, 1988. Other third party affidavits submitted by the applicant lack detail generally, and specifically fail to list the address at which the applicant resided during the period in which the affiants were acquainted with him

As the applicant has not submitted sufficient credible evidence of residency, he therefore has not met his burden of proof in showing that she had continuously resided in the United States in an unlawful status

from before January 1, 1982 through May 4, 1988. Accordingly, the applicant has not established eligibility to adjust status to Legal Permanent Resident status under section 1104 of the LIFE Act.

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