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FILE:

MSC 02 217 60072

Office: HARTFORD

Date: JUL 24 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. 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, Boston, Massachusetts, 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 director “abused [his] discretion, and/or acted arbitrarily and capriciously; and/or failed to act in accordance with the law in denying” the applicant’s LIFE Act application. Counsel further asserts that the applicant “duly submitted evidence in support of his application,” and that the director failed to specify deficiencies in this evidence or give the applicant a “fundamentally fair amount of time to respond” to the Notice of Intent to Deny (NOID). Counsel submits a brief 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 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 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).

The applicant stated in an April 30, 2002 affidavit that he first entered the United States in April 1981 when he crossed the border from Mexico without inspection. On his Form I-687, Application for Status as a Temporary Resident, which he also signed under penalty of perjury on April 17, 1990, the applicant

stated that he left the United States once during the qualifying period, from August 25 to September 24, 1987, and that he lived at [REDACTED] in Hartford, Connecticut throughout the qualifying period. The applicant did not identify a specific employer for whom he worked, but stated that he worked at [REDACTED] in Wethersfield, Connecticut as a cashier from September 1981 to December 1989. On the Form I-687 application, the applicant denied that he had ever used another name.

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

1. An April 17, 1990 affidavit from [REDACTED] who describes himself as a friend of the applicant, and stated that, to his personal knowledge, the applicant had resided in the United States since 1981. [REDACTED] did not provide information regarding his initial acquaintance with the applicant or how he dated the applicant's arrival in the United States.
2. A July 24, 2001 affidavit from [REDACTED] in which he stated that he met the applicant in 1981, when the applicant worked at a convenience store on Route 15 in Wethersfield, which included the affiant's sales territory. [REDACTED] stated that he lost contact with the applicant until 1996.
3. A July 25, 2001 affidavit from [REDACTED], in which he stated that he met the applicant when he worked at the Cumberland Farms Store on Route 15 in Wethersfield. Although he did not specifically state that he met the applicant in 1981, [REDACTED] stated that he stopped at the store two to three times per week during 1981. [REDACTED] stated that he also saw the applicant working in the store in 1985 to 1987 and last saw him in 1988.
4. Copies of rental receipts, showing the applicant as the remitter and dated in September, October and December 1982.
5. A copy of a February 15, 1984 letter from Data Institute, addressed to the applicant at [REDACTED] in Hartford.
6. A copy of a June 26, 1985 letter from Sir Speedy, Inc., addressed to the applicant at [REDACTED] in Hartford.

The applicant submitted copies of receipts dated in 1981 and 1982; however, these receipts do not identify the applicant and therefore are not evidence of his residency and presence in the United States during the requisite period.

In a November 3, 2004 notice of intent to deny, the director notified the applicant that his evidence did not "meet the standard required for approval" and that his evidence "does not include any detailed record that [he was] present in the United States during the entry time required for eligibility under" the LIFE Act. In response, the applicant submitted a December 1, 2004 affidavit from [REDACTED], in which he stated that he met the applicant in 1981 through business "dealings" with Pakistani men who lived at [REDACTED] in East Hartford, where the affiant also lived, and that they became "social friends." The affiant stated that he referred to the applicant by his real name, but did not indicate an alias by which the applicant was also known. [REDACTED] stated that he lived on [REDACTED] until 1984 and socialized with the applicant at least twice a week. [REDACTED] did not indicate how he dated his relationship with the applicant.

The applicant also submitted a November 24, 2004 letter from [REDACTED] Employee Relations Supervisor with Cumberland Farms. [REDACTED] stated that the company had no record of the applicant's employment with the company. She noted that the applicant alleged to have worked under another name and social security number and advised counsel that if the applicant provided the information, the company could research further and correct Social Security and Internal Revenue Records as necessary. The record also contains counsel's response to the letter, wherein counsel stated that the applicant "believes" he used the name "[REDACTED]" and was paid in cash.

We note that the applicant stated on his Form I-687 application that he had never used another name, and did not indicate in any other documentation submitted in support of his application that he had used a name other than his own. None of the supporting affidavits, especially those of the affiants who attested to knowing the applicant when he worked at the Cumberland Farms store, indicated that the applicant was known under an assumed name. It seems illogical that the applicant would work under an alias but reveal his true identity to those who provided merchandise to or obtained service from the store.

On appeal, counsel alleges that Cumberland Farms initially told the applicant that it maintained no employee records from that time, and only in response to counsel's inquiry did the company request additional information to research its records. Counsel asserts that had the district office advised the applicant of the deficiencies in his evidence, he would have had more time to pursue the corroborative evidence from Cumberland Farms. The applicant submitted his appeal to the AAO on January 27, 2005 and counsel stated that a brief and/or additional evidence would be submitted within 30 days. On February 28, 2005, the AAO received counsel's brief; however, counsel did not request additional time in which to receive corroborative evidence from Cumberland Farms, and in the more than two years since the appeal was filed, the AAO has received no further documentation from the applicant.

While the applicant submitted affidavits from those who stated that he worked at Cumberland Farms during the requisite period, the company stated it had no record of his employment. The applicant submitted only minimum contemporaneous evidence of his residency in the United States during the qualifying period.

Given the minimum contemporaneous documentation, his failure to corroborate his employment and the unresolved inconsistency of his address, it is concluded that the applicant has not established by a preponderance of the evidence that he resided continuously in the United States during the required period.

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