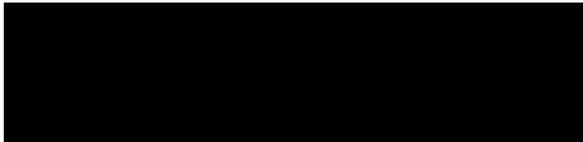


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Services

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JUN 05 2007

FILE:



Office: CHICAGO

Date:

MSC 02 241 61660

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 through May 4, 1988.

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.

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:

- An affidavit notarized February 9, 1991, from [REDACTED] of Chicago, Illinois, who indicated that he has known the applicant since 1982. The affiant asserted that the applicant is his brother-in-law's brother.

- An affidavit notarized February 9, 1991, from [REDACTED] of Chicago Illinois, who indicated that she has known the applicant since May 1, 1982. The affiant asserted that the applicant is a friend of her husband and they play soccer together.
- An affidavit notarized February 9, 1991, from [REDACTED] of Chicago, Illinois, who indicated that he has known the applicant since January 1979. The affiant asserted that the applicant is his brother-in-law's brother and that they were co-workers.
- A notarized affidavit in the Spanish language with English translation dated December 20, 1990, from his brother, [REDACTED] who indicated that the applicant resided at his Chicago residence of [REDACTED] from September 15, 1981 through December 30, 1985. It is noted that the affidavit written in the Spanish language indicated the applicant resided with the affiant from September 15, 1981 through December 30, 1983.
- An additional notarized affidavit dated May 22, 2002, from [REDACTED] of Hoffman States, Illinois, who indicated that the applicant resided at his Chicago residence of [REDACTED] from September 15, 1981 through December 30, 1985.
- A notarized affidavit dated December 27, 1990, from [REDACTED] who indicated that the applicant was in his employ as a dishwasher at Burger Inn at [REDACTED], Chicago, Illinois from 1983 to 1985.
- A notarized affidavit in the Spanish language with English translation dated December 18, 1990, from [REDACTED] who indicated that the applicant worked as a general manager of maintenance in his house at [REDACTED] from January 1, 1986 through May 30, 1989.
- An additional affidavit notarized May 21, 2002 from [REDACTED] of Nevada, who attested to the applicant's residence in the United States since October 1981. The affiant attested to the applicant's residence from October 1981 to December 1985 at [REDACTED] Chicago, Illinois, and reaffirmed the applicant's employment at his house. The affiant asserted that he met the applicant at a soccer game and they have remained friends since that time.
- A letter dated March 7, 2003 from [REDACTED] pastor of St. John Berchmans Parish in Chicago, Illinois, who indicated that the applicant has been a member of the parish since the early 1980s.
- An affidavit notarized May 21, 2002 from [REDACTED] of Chicago, Illinois, who attested to the applicant's residence in the United States since 1981 specifically, the applicant's Chicago residence at [REDACTED] from March 1986 to May 1989. The affiant asserted that he first met the applicant at a church gathering and has maintained a close friendship since that time.
- A letter from [REDACTED], a doctor in Chicago, Illinois, who indicated that the applicant was a patient from 1983 to 1989.

On March 16, 2004, the director issued a Notice of Intent to Deny, which advised the applicant that the evidence submitted to establish continuous residence in the United States was insufficient. The applicant, in response, submitted:

- An additional affidavit from [REDACTED] who indicated that he was aware of the applicant residing in the United States since January 1982 and attested to the applicant's Chicago residence at [REDACTED] from September 1981 to December 1985.
- A notarized affidavit from [REDACTED] of Chicago, Illinois, who indicated that she was aware of the applicant residing in the United States since January 1982, and attested to his Chicago residence at [REDACTED] from September 1981 to December 1985.
- A letter from [REDACTED] who reasserted the veracity of his initial letter and stated that in 2000, his office was broken into and medications, equipment and medical records including the applicant were stolen. The affiant provided the police report number for this incident.

Citizenship and Immigration Services (CIS) has determined that affidavits from third party individuals may be considered as evidence of continuous residence. *See Matter of E-- M--*, supra. In ascertaining the evidentiary weight of such affidavits, CIS must determine the basis for the affiant's knowledge of the information to which he or she is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E-- M--*, supra, the affidavits would not necessarily be fatal to the applicant's claim, if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his or her knowledge for the testimony provided.

In this instance, the applicant submitted evidence, 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 district director has not established that the information in the affidavits was inconsistent with the claims made on the application, or that it was false information, and the record contains no evidence to suggest that the director attempted to contact any of the former employers to verify the authenticity of the employment documents submitted. 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 asserted claim 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.

Finally, it is noted that the applicant was arrested on September 17, 2001, by the Chicago Police Department for battery. On November 2, 2001, the offense was stricken off the record. [REDACTED]

ORDER: The appeal is sustained.