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U.S. Citizenship
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JUN 26 2007

FILE: [REDACTED]
MSC 01 364 60301

Office: LOS ANGELES

Date:

IN RE: Applicant: [REDACTED]

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. 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, Los Angeles, California, 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, the applicant asserts that at the time of his interview he submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. The applicant provides additional documents along with copies of previously submitted documents in support of the appeal.

It is noted that the director, in denying the application, did not address the evidence furnished in response to the Notice of Intent to Deny, and did not set forth the specific reasons for the denial pursuant to 8 C.F.R. § 103.3(a)(1)(i). As such, the documentation submitted throughout the application process will be considered on 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. 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 throughout the application process:

- A 1988 wage and tax statement and a weekly time sheet for the period ending June 15, 1986 from Weinberger Construction Co., Inc. in Los Angeles, California.
- A letter dated April 21, 1990 signed by [REDACTED] of Weinberger Construction Co., who attested to the applicant's employment in a part-time and full-time capacity since 1981.
- Affidavits notarized June 9, 1990, from [REDACTED] and [REDACTED] of Los Angeles, California, who attested to the applicant's Los Angeles residence since November 1981.
- A photocopied enveloped postmarked September 19, 1983, and a telephone bill dated September 11, 1983, from Pacific Telephone in Van Nuys, California addressed to the applicant's Los Angeles residence at [REDACTED]
- A letter dated April 11, 1990 from [REDACTED], pastor of Our Lady Queen of Angels in Los Angeles, California, who indicated that the applicant has been a member of the parish since 1981.
- Photocopied rent receipts dated December 1, 1981, February 1, 1982, April 1, 1983, January 1, 1984, July 1, 1985, March 1, 1986, and during 1987 for residence at [REDACTED]
- Receipts dated during 1982 that list the applicant's address as [REDACTED]
- An unsigned Employment Application Contract dated January 20, 1984.
- An ATM card from Bank of America, which indicated that the applicant has been a member since 1988.
- A Patient Information Form dated October 20, 1985 from the Los Angeles County Department of Health Services, which listed the applicant's address as [REDACTED]
- Documentation from [REDACTED] a surety company, which indicated that a bond had been posted on the applicant's behalf on September 1, 1987.

On January 12, 2004, the director issued a Form I-72, requesting the final court disposition for the applicant's arrest under the alias [REDACTED] on October 27, 1990, for robbery, a violation of section 211 PC. The applicant, in response, submitted a letter from the Los Angeles County Superior Court, which indicated the court had examined its records by name only from January 1984 to December 2003 and found no record. It is noted that the FBI report dated July 12, 2005 indicated that the applicant was detained only and was subsequently released as prosecution was declined in the interest of justice.

The applicant also submitted a court disposition for Case no. [REDACTED] which indicated that on June 29, 1989, the applicant was convicted of violating section 23152(b) VC, a misdemeanor. This single misdemeanor conviction does not render the applicant ineligible pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a).

On December 22, 2004, the director issued a Notice of Intent to Deny, which advised the applicant that his employment letter failed to indicate the representative's title and his manner of payment. The director noted that at the time of his interview, the applicant indicated that he received his wages in cash; however, he provided a wage and tax statement for 1988 from his employer. The applicant was also advised that he listed on his Form I-687 application to have been absent from the United States from July 20, 1987 to August 30, 1987; however, the Form I-293 in the record indicated that the applicant entered without inspection into the United States on August 26, 1987. The director noted that this document contradicted the applicant's claim to have been in El Salvador at that time. The applicant was also advised that the rental receipt dated December 1, 1981, was questionable "because said form was not yet in circulation until its revision at a later date."

A review of the record fails to support the director's finding that the rental receipt presented by the applicant was not in circulation in 1981. When any decision will be based, in whole or in part, on derogatory evidence, such evidence *must* be incorporated into the record. As such, the director's finding will be withdrawn.

The applicant, in response, asserted that he had no intention of misleading the interviewing officer or disrespecting Citizenship and Immigration Services by giving erroneous information. The applicant asserted:

Its [sic] simple that many years have pass and some of the date were not exactly remember.

* * *

As for my entries I probably did wrong in guessing when I did not remember the exact dates but I am enclosing copy of my LAST entry in 1987 when I was apprehended by the INS.

As evidence, the applicant submitted copies of his Form I-221S, Order to Show Cause, Form I-293, and Form I-94, Arrival/Departure Record, which reflect an entry of August 26, 1987 into the United States.

The applicant asserted that the representative who signed his employment letter is the secretary for Weinberger Construction Co. The applicant asserted that he is still employed by the company and as evidence, provided a copy of his earnings statements for the periods ending December 11 and 25, 2004. The applicant also asserted that he is eligible for Temporary Protected Status (TPS) because he is an El Salvadoran national who has continuously resided in the United States prior to December 30, 1998.¹

On appeal, the applicant submits a copy of [redacted] letter that was previously provided along with:

- A letter dated February 16, 2005, from [redacted] of Weinberger Construction Co., who attested to the applicant's part-time and full-time employment since 1981.
- A notarized affidavit from [redacted] of Los Angeles, California, who indicated that he has known the applicant since December 1981 and attested to the applicant's Los Angeles address at [redacted]. The affiant asserted that he resided in the same neighborhood [redacted] as the applicant and has remained in contact with the applicant since that time.
- A notarized affidavit from [redacted] of El Monte, California, who attested to the applicant's residence in the United States since November 1983 and indicated that he has remained in contact with the applicant since that time.

The difference in the dates of the 1987 entry (August 26 and August 30) is relatively minor as they are in such close proximity to each other. The applicant knew of his August apprehension as he listed on his Form I-687 application that he had a prior A-file ([redacted]). As such, the statement of the applicant regarding the date of his last entry is considered to be a reasonable explanation in these circumstances. Although the letter from [redacted] did not establish [redacted] affiliation with the company, it did reaffirm the applicant's claimed employment during the requisite period. Due to the applicant's undocumented immigration status, it is not unusual for the employer to have paid the applicant in cash during the requisite period.

In this instance, the applicant submitted evidence, including contemporaneous documents, 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

¹ The record reflects that the applicant had applied for TPS, but said application was denied due to abandonment on March 6, 2003.

willingness to testify in this matter. The district director has not established that the information in these affidavits was inconsistent with the claims made on the application, or that such information was false. 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.

ORDER: The appeal is sustained.