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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted] MSC 01 312 60336

Office: CHICAGO

Date: MAR 07 2007

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:

[Redacted]

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, Chicago, and is now before the Administrative Appeals Office (AAO) 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 informed the director of a change in his address, but still did not receive the Notice of Intent to Deny (NOID). Counsel asserts that the applicant has responded to every request for evidence with evidence of residency.

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. To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony. 8 C.F.R. § 245a.12(f). 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).

Here, the submitted evidence *is* sufficiently relevant, probative, and credible to meet the applicant's burden of proof.

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 letter dated December 7, 1990 from [REDACTED], Alderman of the 22nd Ward of Chicago, Illinois stating that the applicant has been a long time resident of the community.
- An affidavit notarized on October 30, 1990 from [REDACTED] of Chicago, Illinois stating that he has known the applicant as a friend from 1980 through that date.
- An affidavit notarized on October 30, 1990 from [REDACTED] of Chicago, Illinois stating that the applicant was his tenant at [REDACTED] in Chicago from 1980 to November 1989.
- A letter dated October 26, 1990 from [REDACTED] of McCoy Auto Wreckers, Inc. stating that the applicant, with residence at [REDACTED] in Chicago, had been employed by the company from the year 1981 to that date.
- Various pay stubs with dates in the years 1985, 1986, 1987 and 1990 from McCoy Auto Parts bearing the applicant's signature.
- An undated letter from [REDACTED] of the St. Francis of Assisi/Our Lady of the Angels Church in Chicago, Illinois stating that the applicant started attending the church in the early or middle 1980s, and continues as a registered parishioner.
- An undated letter from [REDACTED], Pastor of the Millard Congregational Church in Chicago, Illinois, stating that the applicant has attended worship services and other activities at the church since the fall of 1980, but has remained a Catholic.

On March 11, 2004, the director issued a Notice of Intent to Deny (NOID) to the applicant's address of record stating that the applicant had not provided "primary or secondary evidence" to establish residency. The director noted that the affidavits and other documentation submitted by the applicant had been considered, but determined that the applicant had not established by a preponderance of evidence that he met the requirements to adjust status under the LIFE Act.

In the decision to deny the application dated November 2, 2004, the director stated that the applicant failed to respond to the NOID and denied the application.

On appeal, counsel asserts that the applicant did not receive the (NOID). Counsel asserts that the applicant has responded to every request for evidence with evidence of residency.

Upon review of all the evidence in the record, the AAO determines that the submitted evidence is sufficiently relevant, probative, and credible to meet the applicant's burden of proof. The record indicates that the NOID was sent to the applicant's current address, and there is no other evidence showing that the applicant did not receive the NOID. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Nevertheless, the AAO determines that the applicant has submitted sufficient evidence to meet his burden of proof. As stated above, although the LIFE Act 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). The applicant has submitted pay stubs and affidavits or letters from a landlord, employer, alderman, church representatives and a friend to show that he resided in the United States from before January 1, 1982 through May 4, 1988. The information in these documents is consistent with the information provided by the applicant on his Form I-687 application. The director did not find any inconsistencies in the evidence submitted by the applicant or between this evidence and other evidence in the record. When viewed in its totality, the evidence in the record presents a consistent account of the applicant's residency in the United States from before January 1, 1982 through May 4, 1988.

The applicant has met his burden of proving continuous residence in an unlawful status in the United States from before January 1, 1982 through May 4, 1988. Accordingly, the applicant has established eligibility to adjust to Legal Permanent Resident status under section 1104 of the LIFE Act.

ORDER: The appeal is sustained. The application is returned to the director for adjudication consistent with the foregoing.