



U.S. Citizenship
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Services

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PUBLIC COPY

FILE: [Redacted]
MSC 02 187 60742

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.

A handwritten signature in black ink, appearing to be "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, Chicago, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 contends that the director did not apply the appropriate regulatory standards in evaluating and the evidence of residency submitted by the applicant.

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).

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).

Here, the submitted evidence is not 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:

- An affidavit notarized by a Florida notary on February 28, 1991 from [REDACTED] residing at [REDACTED] in an unspecified city and state, stating that the applicant has been living in the United States since 1981 and listing the applicant's address as [REDACTED] in an unspecified city and state.
- An affidavit notarized on August 18, 2004 from [REDACTED] of Bensenville, Illinois stating that he has known the applicant has been living in the United States since 1988, and that the applicant resides at [REDACTED] in Glendale Heights, Illinois.

On March 11, 2004, the director issued a Notice of Intent to Deny (NOID) to the applicant. The director, citing the evidentiary standards found at 8 C.F.R. § 103.2(b), stated that the evidence submitted "did not meet the criteria established . . . to substantiate your claim to being physically present in the United States during the prescribed periods."

In response to the NOID, counsel submitted the affidavit from [REDACTED]

In the decision to deny the application dated January 10, 2005, the director stated that "[t]here has been no evidence of the existence of primary or secondary evidence as outlined" in 8 C.F.R. § 103.2(b). The director continued by stating that "[w]hile the Service has taken your affidavits and other documentation into consideration, it is the decision of the Service that you have not established by a preponderance of evidence that you meet the requirements to adjust status" under the provisions of LIFE Act.

On appeal, counsel asserts that the regulations relied upon by the director in evaluating the applicant's evidence "are not directly related to LIFE Act applications." Counsel also contends that the director "misconstrued" the definition of the preponderance of the evidence, a standard requiring that the applicant's evidence be weighed against evidence offered in opposition to it. Counsel observes that the director offered no evidence in opposition to the evidence submitted by the applicant.

Upon review of all the evidence in the record, the AAO determines that the submitted evidence is not sufficiently relevant, probative, and credible to meet the applicant's burden of proof. The decision indicates that the director *did* consider the evidence submitted by the applicant. While the AAO concurs with counsel that the director failed to cite the regulatory provisions that specifically govern the evaluation of evidence submitted in support of LIFE Act applications, namely the regulations set forth at 8 C.F.R. § 245a.2(d)(3), application of these regulations to the evidence in the record demonstrates that the director did not err in finding that the applicant had failed to meet his burden of proof.

The evidence of residency submitted by the applicant, consisting of two third-party affidavits, lacks essential detail. In his affidavit, [REDACTED] states that he knows the applicant has lived in the United States since 1981, but fails to indicate the origin of this knowledge, the basis of his acquaintance with the applicant, or the addresses at which the applicant resided from 1981 to the date of the affidavit. [REDACTED] includes an address for the applicant that the applicant listed as his current address on his Form I-687, but this address is not among the addresses the applicant listed as residences since first entry on line 33 of that form. The applicant provided two addresses on line 33, but failed to list the dates of his residence at each, indicating only that he lived at each for twelve months.

Like [REDACTED], [REDACTED] fails to state the basis of his acquaintance with the applicant or the origin of his knowledge that the applicant has been living in the United States since 1988, a period which at most only encompasses the last several months of the qualifying period. The evidence submitted by the applicant is of little or no probative value in demonstrating the applicant entered into the United States before January 1, 1982 and resided continuously in the United States in an unlawful status since such date through May 4, 1988.

As discussed above, the regulation at 8 C.F.R. § 245a.12(e) provides that "[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods." Counsel's contention that the applicant must be found to have met this burden in the absence of evidence from the director "opposing" the applicant's evidence is not consistent with the preponderance of evidence standard outlined by the court in *Matter of E-M-*, as discussed above.

The AAO also notes for the record that the applicant was convicted of at least one count of aggravated assault (720 ILCS § 12-2(a)(1)), a misdemeanor, in the Eighteenth Judicial Circuit Court of the State of Illinois in 1999, and sentenced to one year of court supervision and 20 hours of "Public Service Employment" by that court.

Given the insufficiency of the evidence submitted by the applicant, the AAO determines that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982, and resided in this country in an unlawful status continuously since that time through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b).

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