



U.S. Citizenship
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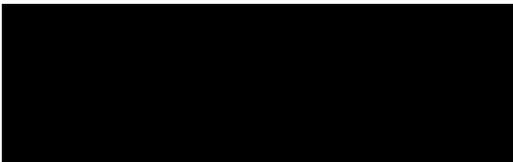
Office: NEW YORK

Date: MAR 16 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. 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, New York, New York, 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 states that the applicant submitted timely proof of his eligibility for benefits under the LIFE Act, and that the alleged inconsistencies in the applicant's interview were the result of a misunderstanding or misinterpretation by the interviewing officer. Counsel submits a brief and a statement from the applicant 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 on a form to determine class membership, which he signed under penalty of perjury on October 12, 1990, that he entered the United States without inspection on May 2, 1981, and in a May 24, 2004 affidavit, the applicant stated that he arrived in the United States on April 24, 1981.

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

1. A March 17, 2004 notarized letter from [REDACTED] in which he stated that he met the applicant in 1981, when the applicant came to [REDACTED]'s place of employment in Baton Rouge, Louisiana looking for work. [REDACTED] stated that the applicant again sought employment from him in 1982 and 1984.
2. Copies of envelopes addressed to the applicant in the United States with postmarks dated in 1981, 1982 and 1983. None of the envelopes carry postal cancellation marks.
3. An October 10, 1990 statement from [REDACTED], certifying that the applicant had worked for the company "since May 1988." The letter does not indicate [REDACTED]'s title or position in the company, the specific date that the applicant began working, the source of the information regarding the applicant's employment or the applicant's address at the time of his employment. 8 C.F.R. § 245a.2(d)(3)(i). We note that while the statement purports to be notarized, the notary's stamp and complete jurat or acknowledgement are missing from the document.
4. An October 8, 1990 statement from [REDACTED], in which he stated that he lived with the applicant in Baton Rouge from May 1981 to August 1986. [REDACTED] listed his current address as [REDACTED] in Akron, Ohio. However, in 2002, the district office was unable to confirm Mr. [REDACTED]'s address and phone number or the information that he provided. The applicant was advised of this during his May 7, 2002 LIFE Act adjustment interview, but provided no additional information regarding [REDACTED]. Further, [REDACTED] statement, like that of [REDACTED] while purporting to be notarized, lacks a notary stamp and accompanying information regarding the notary's authority.

The applicant was also informed during his interview that the district office was unable to confirm his employment with Melrose Exxon. The applicant submitted no other documentation to confirm any of his other employment during the qualifying period.

The applicant submitted copies of photographs that purport to show him in various locations in the United States. However, these documents are not dated and, without more, merely go to establish presence in the United States and provide no confirmation that the applicant was residing in the United States at any time during the qualifying period. The applicant submitted no verifiable documentation of his presence and residency in the United States during the qualifying period subsequent to 1984.

Given the minimum contemporaneous documentation, the minimum supporting documentation regarding his residency, and his unconfirmed employment history, it is concluded that the applicant has failed to establish that it is more probable than not that he resided continuously in the United States for the required period.

The record reflects that on September 27, 2000, the applicant was convicted of a violation of the New York Penal Law section 240.20, disorderly conduct. He was given a conditional discharge for one year. [REDACTED]

[REDACTED] The record also contains a copy of a Federal Bureau of Investigation (FBI) report indicating that the applicant was arrested by the New York Police Department on October 17, 2000 and charged with violations of New York Penal Law sections 215.50 (criminal contempt) and 240.30 (aggravated harassment).

[REDACTED] The record does not contain a final disposition of these offenses.

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