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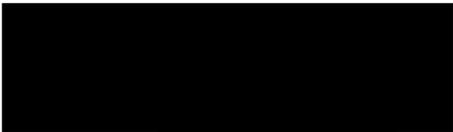
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

MSC 02 120 62314

Office: LOS ANGELES

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MAR 30 2007

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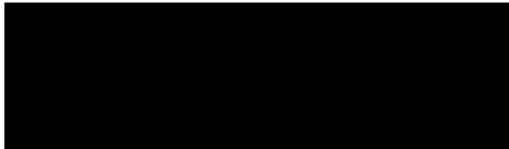
Applicant:



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. 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, Los Angeles, and is now before the Administrative Appeals Office 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 asserts that the applicant submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988 and the director erred in denying the application "without any finding of credibility as to the evidence presented."

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 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).

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).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must be on employer letterhead stationery, if the employer has such stationery, and must include the following:

- (A) Alien's address at the time of employment;
- (B) Exact period of employment;
- (C) Periods of layoff;
- (D) Duties with the company;
- (E) Whether or not the information was taken from official company records; and
- (F) Where records are located and whether the Service may have access to the records.

The regulation further provides that if official company records are unavailable, an affidavit form letter stating that the alien's employment records are unavailable and explaining why such records are unavailable may be submitted in lieu of meeting the requirements at (E) and (F) above.

Here, the submitted evidence is not relevant, probative, and credible.

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 November 14, 2004 from [REDACTED], manager of the IHOP restaurant in Chatsworth, California, stating that the applicant worked for him at IHOP restaurants in Palmdale and Panorama City for "exact dates not know at this time." [REDACTED] indicates that he managed the Palmdale restaurant from 1992 to 1993 and the Panorama City restaurant from 1993 to 1998.
- An affidavit notarized on November 30, 2001 from [REDACTED], the applicant's sister, stating that the applicant resided with her and her family from January 1981 to August 1983, and again from July 1989 to that date.

- A letter dated September 26, 1997 from [REDACTED] former owner of the IHOP restaurant in Canoga Park, California, stating that the applicant worked at the restaurant from January 1981 to about December 1988.
- A letter dated June 30, 1993 from [REDACTED] former owner of the IHOP restaurant in Canoga Park, California stating that the applicant “worked for me during the period from January 1981 to approximately December 1984 and on and off after that to June 1990.”
- An affidavit notarized on July 9, 1993 from [REDACTED], the applicant’s brother, stating that the applicant lived with him from January 1984 to June 1989.
- A letter dated June 5, 1990 from [REDACTED] former owner of IHOP restaurant in Canoga Park, California, stating that the applicant worked at the restaurant from January 1981 to about December 1988.
- An affidavit notarized on July 10, 1993 from [REDACTED] the applicant’s sister, stating that the applicant lived with her and her family from January 1981 to August 1983, and again from July 1989 to that date.
- An affidavit notarized on July 9, 1993 from [REDACTED] stating that he has know that the applicant has lived in North Hollywood, Canoga Park and Palmdale, California from January 1981 to that date.
- Envelopes bearing the applicant’s name and postmarked in the years 1984, 1986, 1987, and 1988 respectively.
- Pay stub from Dajon Food Company dated in year 1987.
- Pay stubs from IHOP restaurant dated in years 1986 and 1987 respectively.
- Medical center receipt dated in 1986.
- An identification card issued by the State of California to the applicant at [REDACTED]

On October 26, 2004, the director issued a Notice of Intent to Deny (NOID) stating that the affidavits the applicant submitted to demonstrate his residency in the United States prior to 1983 did “not contain sufficient information and corroborative evidence, thus lacking in probative value to support” the application.

In response to the NOID, counsel submitted a declaration from the applicant and the November 14, 2004 letter from Joe Lupica. In the declaration, the applicant stated that he had sought additional evidence of residency, but was unable to obtain more evidence beyond the documents he had submitted.

In the decision to deny the application dated December 22, 2004, the director stated that "the information [the applicant] submitted . . . failed to overcome all the grounds for denial as stated in the NOID," and denied the application.

On appeal, counsel contends that the denial of the applicant's case was "cursory" and "done without any finding of credibility as to the evidence presented." Counsel asserts that the applicant's credible testimony accompanied by the evidence submitted by the applicant is sufficient to show the applicant's physical presence in the United States. Counsel contends that the director did not contact [REDACTED] failing to determine the credibility of the evidence and whether the evidence presented was "substantial evidence of physical presence"

The AAO notes that the director found only the evidence of residency "prior to 1983" insufficient. The AAO infers that the director found the evidence of residency in 1983 and subsequent years sufficient. The AAO concurs with such a finding as it concerns only the time period subsequent to October 7, 1983, the issuance date listed on the State of California identification card submitted by the applicant. At issue is the evidence of residency for the period prior to the issuance of that document. This evidence consists of the affidavits from [REDACTED], who asserts that the applicant resided with her during these years, and the letters from [REDACTED] who states that the applicant worked for him at an IHOP restaurant during these years. As noted above, the director found that these documents did not contain sufficient information and corroborative evidence.

Upon review of this evidence, the AAO determines that it is not sufficiently relevant, probative, and credible to meet the applicant's burden of proving that he entered and resided continuously in the United States in an unlawful status prior to October 7, 1983.

The omission from the affidavits and letters at issue of information required by the regulations cited above diminishes the probative value of these documents. None of the letters from [REDACTED] state the applicant's address(es) at the time of employment, whether or not the information contained therein was taken from official company records, and where these records are located and whether USCIS may have access to the records. Although [REDACTED] indicates that the particular IHOP restaurant at which the applicant was employed during the period in question is no longer in business, he does not state that the applicant's employment records are unavailable. Likewise, the affidavits from [REDACTED] list the affiant's current address, but fail to list the address at which the applicant resided during the period at issue.

In addition, the AAO finds that there are inconsistencies between the aforementioned documents and other evidence in the record that raise questions as to the credibility and further diminish the probative value of these documents.

The letters from [REDACTED] are not consistent regarding the exact dates of the applicant's employment at his restaurant. The letters of September 26, 1997 and June 5, 1990 both indicate that the applicant worked at the restaurant from January 1981 to about December 1988, but [REDACTED] states in his letter of June 30, 1993 that the applicant "worked for me during the period from January 1981 to

approximately December 1984 and on and off after that to June 1990.” None of these letters are consistent with the applicant’s form I-687, Application for Status as a Temporary Resident, in which the applicant indicates that he worked at the IHOP restaurant in question from January 1981 to May 1987, or the applicant’s Form G-325, Biographical Information, in which the applicant lists June 1981 to July 1989 as the dates of employment.

There are also inconsistencies in the evidence regarding the applicant’s place of residence. On his Form I-687, the applicant lists [REDACTED] as his residence from January 1981 to August 1983. On his Form G-325, the applicant lists [REDACTED] as his residence from January 1981 to October 1983. As noted above, [REDACTED] fails to specify the address at which the applicant resided from 1981 to 1983

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

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.” Preponderance of the evidence is defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black’s Law Dictionary 1064 (5th ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

In light of the insufficiency in the evidence submitted by the applicant, coupled with the inconsistencies in this evidence as noted above, 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.