



U.S. Citizenship
and Immigration
Services

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FILE:

MSC 02 229 61831

Office: Chicago

Date: MAY 04 2007

IN RE:

Applicant:

PETITION: 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, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel contends that Citizenship and Immigration Services, or CIS (Immigration and Naturalization Service, or the Service) erred in denying the application because the applicant had submitted sufficient evidence in support of his claim of residence in the United States for the requisite period. Counsel includes copies of previously submitted documentation in support of the applicant's 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. *See* § 1104(c)(2)(B) of the LIFE Act and 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 under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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. *See* 8 C.F.R. § 245a.12(e).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982 to May 4, 1988, the submission of any other relevant document including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

8 C.F.R. § 245a.2(d)(3)(v) states that attestations by churches, unions, or other organizations to the applicant's residence by letter must: identify applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

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 petitioner 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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to 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. Here, the submitted evidence is not relevant, probative, and credible.

The applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (Act) on or about July 23, 1996. At part #33 of the Form I-687 application where applicants were asked to list all residences in the United States since the date of their first entry, the applicant listed ██████████ in Chicago, Illinois from November 1981 to July 1985, ██████████ in Chicago, Illinois from July 1985 to July 1987, and ██████████ in Chicago, Illinois from July 1987 to July 1989. In addition, at part #34 of the Form I-687 application, where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, businesses, etc., the applicant listed "None." Further, at part #36 of the Form I-687 application where applicants were asked to list all employment in the United States since entry, the applicant indicated that he worked in maintenance for the ██████████, in Evanston, Illinois from November 1981 to March 1985 and ██████████ at ██████████ in Chicago, Illinois from March 1985 through at least May 4, 1988.

In support of his claim of continuous residence in the United States since prior to January 1, 1982, the applicant submitted an affidavit signed by ██████████ that is dated June 5, 1995. Mr. ██████████ stated that he had known the applicant since 19██ and provided the applicant's most current address of residence as of the date the affidavit was executed. Mr. ██████████ indicated that he and the applicant lived together sharing rent and utilities for an unspecified four-year period. Mr. ██████████ declared that he and the applicant had been co-workers from 1985 through the date the affidavit was executed. However, Mr. ██████████ failed to provide any specific and verifiable information, such as the applicant's address(es) of residence in this country or the employer for whom both he and the applicant worked, that would tend to corroborate the applicant's claim of residence in the United States from prior to January 1, 1982 to May 4, 1988.

Subsequently, on May 17, 2002, the applicant filed his Form I-485 LIFE Act application. The applicant included an employment letter containing the letterhead of the ██████████ in Evanston, Illinois that is signed by ██████████ who listed her position as Director of Operations. Ms. ██████████ stated that the applicant was an employee in good standing with ██████████ at the

██████████ from 1975 to 1977 and at the ██████████ from 1978 to 1985. However, Ms. ██████████ testimony that the applicant was employed at the ██████████ from 1978 to 1985 directly contradicted the applicant's own testimony that he worked for this enterprise from November 1981 to March 1985 at part #36 of the Form I-687 application. Further, Ms. ██████████ testimony that the applicant was employed at the ██████████ conflicted with the applicant's testimony relating to his employers at part #36 of the Form I-687 application as the applicant failed to list this enterprise as an employer. Moreover, the credibility of Ms. ██████████ testimony is further diminished by the fact that the applicant claimed on the Form I-687 application that his residence and employment in the United States began in November 1981, rather than any earlier date.

The applicant included a letter containing the seal of Our Lady of Grace Church in Chicago, Illinois that is dated January 15, 2002. The letter is signed by Reverend ██████████ who listed his position as pastor. In his letter, Reverend ██████████ provided the applicant's most current address and stated that the applicant was a parishioner of this religious institution since 1983. Although Reverend ██████████ listed the applicant's current address of residence as of the date of the letter, he failed to provide a listing of his address(es) of residence during the entire period he was a parishioner of Our Lady of Grace Church beginning in 1983 as required under 8 C.F.R. § 245a.2(d)(3)(v). More importantly, the applicant failed to provide any explanation as to why he did not list his affiliation with this church but instead listed "None" at part #34 of the Form I-687 application, where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, businesses, etc.

While the applicant submitted photocopies of tax documents, utility bills, a residential lease, paycheck stubs, and two employment letters from the ██████████ that tend to corroborate his claim of residence in the United States after April of 1985, he failed to submit sufficient credible evidence of residence for that period from prior to January 1, 1982 to March 1985.

In the notice of intent to deny issued on August 9, 2004, the district director questioned the veracity of the applicant's claimed residence in the United States. Specifically, the district director concluded that the applicant had failed to submit sufficient evidence of residence in this country prior to 1985. The applicant was granted thirty days to respond to the notice.

In response, counsel reiterated the applicant's claim of residence in the United States for the requisite period and noted that the applicant had submitted an employment letter that attested to his employment at the ██████████ from 1975 to 1977 and at the ██████████ from 1978 to 1985. Counsel submitted a photocopy of this employment letter as well as two pages of printouts from Internet pages relating to the corporate owner of the ██████████. However, as discussed above, the applicant made no claim to residence or employment in this country prior to November 1981 on the Form I-687 application. Although the applicant did claim that he was employed at the ██████████ from November 1981 to March 1985, he failed to list the ██████████ as an employer at part #36 of the Form I-687 application.

The district director determined that the applicant failed to submit sufficient credible evidence demonstrating his residence in the United States in an unlawful status for the entire period from

January 1, 1982 through May 4, 1988, and, therefore, denied the Form I-485 LIFE Act application on January 6, 2005.

On appeal, counsel once again reiterates the applicant's claim of residence in the United States for the requisite period and notes that the applicant had submitted an employment letter that attested to his employment at the [REDACTED] from 1975 to 1977 and at the [REDACTED] from 1978 to 1985. Counsel submitted copies of previously submitted documentation in support of the appeal. However, the evidence submitted by the applicant relating to his residence in the United States for that period from prior to January 1, 1982 to April 1985: the employment letter noted by counsel and the letter of membership from the pastor of Our Lady of Grace Church, lack sufficient detail, contain little verifiable information, and are contradictory to the substance of the applicant's own testimony regarding his residence in this country for the requisite period.

The absence of sufficiently detailed supporting documentation and the contradictory nature of testimony and evidence relating to the applicant's residence and employment history in this country seriously undermine the credibility of the applicant's claim of residence for the entire requisite period, as well as the credibility of the documents submitted in support of such claim. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he or she has resided in the United States since prior to January 1, 1982 to May 4, 1988 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.12(e) and *Matter of E-M-*, 20 I&N Dec. 77.

Given the applicant's reliance upon documents with minimal or no probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States for the entire period from prior to January 1, 1982 through May 4, 1988 as required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis.

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