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U.S. Citizenship
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FILE:



Office: LOS ANGELES

Date: NOV 19 2007

MSC 02-065-60422

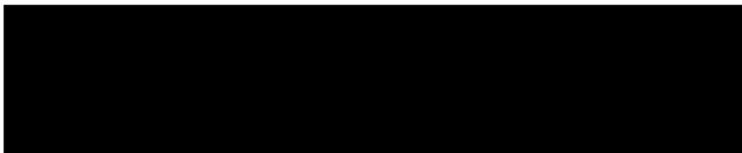
IN RE:

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. If your appeal was sustained, or if your case 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, on December 14, 2004. That decision was appealed to the Administrative Appeals Office (AAO). The AAO rejected the appeal on March 23, 2007, finding that the appeal had been untimely filed. The applicant, through counsel, submitted a certified mail receipt proving that the appeal had been timely filed and requested that the AAO reopen and reconsider its decision. In response, the AAO has sua sponte reopened the decision.¹ The AAO's decision of March 23, 2007 will be withdrawn. The appeal will be sustained.

The district director determined that the applicant had not provided evidence to adequately establish 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, the applicant, through counsel, resubmits documents provided in support of his application and asserts that he has submitted sufficient evidence to demonstrate that he resided in the United for the required time; that he had submitted both primary and secondary evidence of such residence; and that the U.S. Citizenship and Immigration Services (CIS) failed to consider all of the documents submitted and should have given the affidavits and other documents more weight. He also asserts that CIS did not indicate that they had attempted to contact the affiants to corroborate the applicant's testimony regarding his residency and physical presence in the United States during the statutory period.

An applicant for permanent resident status under the LIFE Act 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. See § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States, and is otherwise eligible for adjustment of status under section 1104 of the LIFE Act. 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 states that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* at 80. 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

¹ Motions to reopen or reconsider a decision on an application for permanent residence under the LIFE Act are not considered. 8 C.F.R. § 245a.20(c). The AAO may, however, sua sponte reopen any proceeding conducted by the AAO under 8 C.F.R. § 245a and reconsider any decision rendered in such proceeding. 8 C.F.R. § 103.5(b).

occurring). If the director can articulate a material doubt, it is appropriate for the director either to request additional evidence, or if that doubt leads the director to believe that the claim is probably not true, to deny the application or petition.

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. 8 C.F.R. § 245a.2(d)(3)(i) - (vi).

Here, the submitted evidence is relevant, credible and probative.

On or about March 30, 1990, the applicant applied for class membership in a legalization class-action lawsuit and filed Form I-687, Application for Status as a Temporary Resident. On December 4, 2001, the applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status pursuant to the LIFE Act.

In support of his claim of residence in the United States since a date prior to January 1, 1982 through May 4, 1988, the applicant submitted:

- an employment letter, dated March 5, 1990, on letterhead stationery of "Plants Unlimited" that attests to the applicant's employment in New York from April 9, 1981 to August 2, 1986; pay stubs for September through December 1986 from [REDACTED] Restaurants in Los Angeles; a form W-2 Wage and Tax Statement for 1987; and Social Security records showing income earned by the applicant for the years 1986, 1987 and 1988 (and through 2000);
- an affidavit from [REDACTED] dated March 8, 1990, attesting to the applicant's continuous residence in New York from April 1981 to August 1986 and participation on the affiant's soccer team, "[REDACTED]," from 1982 to 1985;
- two affidavits from [REDACTED], the first dated March 8, 1990, attesting to the applicant's continuous residence in New York from April 1981 to August 1986, stating that the applicant and the affiant shared an apartment and rent during that time period at [REDACTED] Astoria, New York; and a second more detailed declaration, dated April 23, 2003, reiterating the original information and explaining that the affiant referred the applicant to "Plants Unlimited," as he knew the owner; that the applicant joined the soccer team "Alianza Peru" in 1981 (which is a one-year discrepancy from information provided by [REDACTED] above) and played with them every other weekend until 1985; that the affiant traveled to Peru in August 1986 because his mother was sick and returned for work in California; that he has kept in touch with the applicant and is available if additional information is needed;
- rent receipts for the above-noted Astoria, New York, address indicating rent received from [REDACTED] and the applicant for various months in 1981, 1982, 1983, 1985 and August 1986;
- the applicant's own statement and Forms I-485 and G-325A (Biographic Information), which indicate that the applicant lived in Lima, Peru until March 1981, entered the United States in

April 1981, and resided unlawfully, with a brief absence in 1986, until he applied for Permanent Residence under the LIFE Act in 1990.

All of the letters and affidavits submitted by the applicant are notarized and include contact telephone numbers and/or contact addresses. They are internally consistent and consistent with each other, with one minor contradiction in dates, noted above; rent receipts, Social Security reports, and the applicant's statements are also consistent and relevant.

The record also includes a Form I-94, Arrival-Departure Record, showing that the applicant re-entered the United States with a visitor visa (B-2 Visa) on August 20, 1986, consistent with the applicant's testimony. As the record reflects that he was returning to the United States, where he had been residing unlawfully, in order to work, he obtained entry to the United States through fraud or misrepresentation. He is thus inadmissible under section 212(a)(6)(C) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1182(a)(6)(C), and must obtain a waiver. 8 C.F.R. § 245a.2(b)(10). (See discussion of waivers below.) His period of continuous unlawful residence, however, was not broken, as he was returning to "an unrelinquished unlawful residence." 8 C.F.R. § 245a.2(b)(9); *LULAC v. INS*, 956 F.2d 914 (9th Cir. 1992).

On October 20, 2004, the director issued a Notice of Intent to Deny (NOID), stating that the applicant "furnished no documentation in support of his claim of residency other than affidavits/statements for the years 1981 to 1985," and that they "do not contain enough objective evidence to which they can be compared to determine whether the attestations are credible, plausible, or internally consistent with the record." The director did not indicate in the NOID whether she had analyzed other evidence in the record such as the notarized affidavit of a former employer or rent receipts submitted by the applicant in support of his application. In rebuttal, the applicant resubmitted the letter from his former employer, the rent receipts and affidavits from his former roommate (all noted above).

On December 14, 2004, the director denied the application for the reasons set out in the NOID.

On appeal, as noted above, the applicant asserts that CIS failed to consider all of the documents submitted and should have given the affidavits and other documents more weight. He also asserts that CIS did not indicate that they had attempted to contact the affiants to corroborate the applicant's testimony regarding his residency and physical presence in the United States during the statutory period, and that such failure to take reasonable steps to corroborate his claim denied him a fair evaluation of his application.

The AAO agrees that the documentation in the record was not fully considered or given appropriate weight. The AAO finds that the information provided by the applicant is consistent internally and with the affidavits submitted by his past employer and roommate; these affidavits were also internally consistent, non-contradictory and sufficiently detailed; they were also amenable to verification, but there is no evidence in the record that CIS made efforts at such verification. The submission of rent receipts covering the period from 1981 through August 1986 and social security records for the years 1986 through 2000 adds weight to the affidavits. The documentation submitted appears credible.

There is no indication from the record that the applicant's supporting documents are inconsistent with the claims made on the present application or previous applications filed with the Service; that any

inconsistencies exist *within* the claims made on the supporting documents; or that the documents contain false information. As stated in *Matter of E-M-*, 20 I&N Dec. at 80, when something is to be established by a preponderance of the evidence, the proof submitted by the applicant has to establish only that the asserted claim is probably true. That decision also states that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. *Id.* at 79.

The documents that have been furnished may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

Although not raised as an issue by the director or the applicant, the applicant must also establish by a preponderance of the evidence that he is admissible to the United States. As discussed above, the applicant is inadmissible under section 212(a)(6)(C) of the Act for having obtained a visa for entry to the United States through fraud or misrepresentation in 1986. The record also reflects that the applicant may be inadmissible for health reasons as he has tested positive for HIV according to his Medical Examination, Form I-693, dated January 21, 2003. An individual is inadmissible who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to have a communicable disease of public health significance, including infection with HIV, "the etiologic agent for acquired immune deficiency syndrome." Section 212(a)(1)(A)(i) of the Act, 8 U.S.C. § 1182(a)(1)(A)(i).

Regarding both grounds of inadmissibility in this case, a discretionary waiver of inadmissibility is available "for humanitarian purposes, to assure family unity or when it is otherwise in the public interest." Section 245A(d)(2)(B)(i) of the Act; 8 U.S.C. § 1255a(d)(2)(B)(i); 8 C.F.R. § 245a.18(c). In general, denials of legalization on the basis of a waivable ground of inadmissibility should only occur when the applicant also falls within one of the specified nonwaivable grounds of inadmissibility. *Matter of P*, 19 I&N Dec. 823 (Comm. 1988). Waiver applications may be filed on Form I-690 with the appropriate CIS District Office.

The district director shall continue the adjudication of the application for permanent resident status, including the adjudication of any waiver applications that may be submitted. In addition, an FBI report based on the applicant's fingerprints, indicates that he was arrested on May 1, 2003 by the Los Angeles Police Department and charged with one count of "DUI alcohol/drugs." The district director shall ask the applicant to submit an arrest record and relevant court records showing the final dispositions of all charges filed in court or, if applicable, evidence that no charges were filed in court.

The applicant established by a preponderance of the evidence that he entered the United States before January 1, 1982 and he maintained continuous, unlawful residence from such date through May 4, 1988, as required for eligibility for legalization under section 1104(c)(2)(B)(i) of the LIFE Act. Consequently, the applicant has overcome the particular basis of denial cited by the district director. Accordingly, the applicant's appeal will be sustained.

ORDER: The appeal is sustained.