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U.S. Citizenship  
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FILE: [REDACTED]  
MSC 01 354 61217

Office: LOS ANGELES

Date: APR 01 2008

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 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, California, 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 entered the United States prior to January 1, 1982, and therefore had not establish that he continuously resided in the United States in an unlawful status since before January 1, 1982, through May 4, 1988. The director further found that the applicant had failed to submit evidence of his follow-up medical treatment as recommend by the civil surgeon.

On appeal, counsel asserts that the director failed to apply the preponderance of evidence standard to the applicant's evidence, and that the applicant has "substantially complied" with the director's request for evidence. The applicant provides additional documentation 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).

Citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989), the director concluded that the applicant had failed to establish by competent evidence that he had entered the United States prior to January 1, 1982. However, the director misread the court's finding in *Matter of E-M-* and incorrectly applied the provisions of 8 C.F.R. § 245a.16. Neither requires the applicant to submit governmental or non-governmental issued documentation to establish initial entry into the United States. Per 8 C.F.R. § 245a.16, such documentation constitutes only one type of acceptable documentation to aid the applicant in establishing continuous residency in the United States..

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. at 79-80. 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).

On a form to determine class membership, which the applicant signed under penalty of perjury on July 21, 1993, the applicant stated that he first arrived in the United States on June 8, 1981. On his Form I-687, Application for Status as a Temporary Resident, which he also signed under penalty of perjury on May 20, 1993, the applicant stated that from 1982 to 1992 he lived at [REDACTED] Bell Gardens, California. He also stated that he did miscellaneous work from 1992 to 1988. In block 34 of the Form I-687, the applicant denied any affiliation with a club, church or other organization.

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 June 9, 2001, affidavit from [REDACTED], in which he stated that he and the applicant are cousins and that the applicant lived with him at [REDACTED] in Anaheim, California from June to July 1981.
2. A June 23, 2001, affidavit from [REDACTED] who stated that she was the wife of [REDACTED]. The affiant also stated that the applicant lived with her and her husband from June to July 1981.
3. A June 16, 2001, affidavit from [REDACTED], in which he stated that he and the applicant are cousins and that the applicant "had contact with me here in the U.S.A. in June 1981." The affiant listed his address in South Gate, California, but did not indicate where the applicant resided at the time he contacted the affiant in 1981.
4. A January 6, 2001, affidavit from [REDACTED] in which he stated that the applicant lived with him from August 1981 to April 1982 at [REDACTED] in Cudahy, California. The affiant stated that he and the applicant attended the same church.
5. An October 20, 1994 letter from [REDACTED] in which he confirmed that the applicant lived with him as his companion at [REDACTED] in Cudahy, California from 1982 until 1985. In a January 29, 2001, affidavit, [REDACTED] stated that he and the applicant are cousins, and that the applicant came to live in his house in May 1982 and lived there until April 30, 1985.
6. A January 5, 2001, affidavit from [REDACTED], in which he stated that the applicant worked with him from June 1982 to September 1985 as an "assistant in repair of construction." The affiant did not identify the company with which he and the applicant worked, and the applicant submitted no documentation such as pay stubs, pay vouchers, or similar documentation to corroborate his work during this period.
7. A May 7, 2001, letter from St. Gertrude Church in Bell Gardens, California, signed by Father [REDACTED], Assistant Pastor, in which he stated that the applicant was a registered member of the parish from 1982 to 1992. The letter from the church fails to conform with the requirements of 8 C.F.R. § 245a.2(d)(3)(v) in that it does not state the applicant's address during the period of his membership.

8. A May 8, 2001, affidavit from [REDACTED], in which he stated that he had known the applicant since January 1983, and that he knew him through visits to his brother-in-law, [REDACTED]
9. A July 24, 2001, affidavit from [REDACTED], in which she stated that she met the applicant at a birthday party in January 1983, and that he was working for her uncle at the time. The affiant stated that she later married the applicant's brother.
10. An August 31, 2001, affidavit from [REDACTED] the sister of [REDACTED] in which she stated that she had known the applicant since 1984 and that the applicant worked with her brother.
11. A January 17, 2001, affidavit from [REDACTED] in which she stated that she met the applicant in "the church group" and that he "came to live at my residence located at [REDACTED] in Cudahy" from May 1985 to June 1986.
12. An June 6, 2001, from [REDACTED], in which she stated that the applicant rented her property at [REDACTED] in Cudahy from May 1985 to July 1986. This information appears to conflict with the statement of [REDACTED] above, in which she stated that the applicant lived with her at her residence at this same address.
13. Copies of money order receipts dated in June and October 1985. The receipts show a company address in Los Angeles, but do not show a purchaser or an address. The names [REDACTED] and [REDACTED] are written on the documents; however, it is unclear when the names were added.
14. A copy of a September 6, 1985, telegram, apparently sent by the applicant. However, the document does not indicate an address for the applicant and contains no evidence that it originated in the United States.
15. A copy of the applicant's October 31, 1985, State of California identification card. The card shows an address at [REDACTED] in Cudahy. The applicant also submitted a copy of an employment identification card from Nelco Products, Inc., in the name of [REDACTED]. However, the card contains no further personal identification and is not dated. We also note that on his Form I-687 application, the applicant did not identify Nelco Products or any specific employer during the qualifying period.
16. A January 13, 2001, affidavit from [REDACTED], in which he stated that he had known the applicant since November 1985, that they attended the same church group, and that the applicant came to live with him at his home from July 1986 to September 1989. The affiant did not indicate the address at which he lived during the period the applicant resided with him, but stated that the applicant "was sharing one of our rooms and I received rent from him for that period of time." In a July 27, 1993, affidavit, [REDACTED] stated that the applicant "left to Mexico" on May 5, 1987 because "her" father was ill and returned on June 8, 1987.
17. A copy of a 1985 Form 1040, U.S. Individual Income Tax Return, showing the filer as [REDACTED]. The taxpayer did not date the document, although the preparer dated the form in March 1986. The record contains no evidence that the tax return was filed with the Internal Revenue Service. The record also contains copies of two 1985 Forms W-2 issued to [REDACTED] at [REDACTED] in Cudahy.

18. Copies of two March 1, 1986, PS Form 3806, Receipt for Registered mail, showing the senders as [REDACTED] and [REDACTED] with an address at [REDACTED] in Cudahy. The applicant also submitted a copy of a U.S. postal money order receipt dated the same date. It is unclear who [REDACTED] is.
19. Copies of bills from Southern California Edison Company addressed to [REDACTED] at [REDACTED] in Cudahy. The bills indicated that they were for service periods from April 21 to May 8, 1986, May 8 to June 9, 1986, and from June 9 to July 10, 1986. We note that the April bill indicates that service was initiated on April 21, 1986.
20. Copies of bills from Southern California Gas Company addressed to [REDACTED] at [REDACTED] [REDACTED] in Cudahy, California. The bills indicated that they were for the billing periods April 21 to April 28, 1986, April 28 to May 28, 1986, and May 28 to June 26, 1986.

The applicant also submitted a copy of a 1988 Form W-2 and copies of pay stubs from Maxwell Products with the employee identified as [REDACTED]. The pay stubs do not indicate that the wages reported on the Form W-2 were for work performed within the qualifying period.

On appeal, counsel states that CIS should consider the applicant's statements on his Form I-687 application and that the affidavits and letters should be examined to determine if they are internally consistent, plausible and credible.

An examination of the evidence submitted by the applicant throughout the application process reveals inconsistencies and contradictions. The applicant, for example, indicated on his Form I-697 application that he lived at [REDACTED], Bell Gardens, California from 1982 to 1988. However, affidavits and other documentation he submitted attest to his residences at [REDACTED] in Cudahy, California and [REDACTED] in Cudahy. Additionally, [REDACTED] z stated that the applicant lived with her at her residence located at [REDACTED] in Cudahy from May 1985 to June 1986. However, [REDACTED] stated that the applicant rented the property from her and utility receipts in the name of [REDACTED] indicates that the applicant was responsible for service at [REDACTED] from April to at least June 1986.

Additionally, the applicant submitted a statement from St. Gertrude Church attesting to his membership in the parish from 1982 to 1992 and affidavits from several individuals who claimed to know him through their church relationship. However, on his Form I-687 application, the applicant denied any affiliation with a church or other organization.

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

Given the unresolved inconsistencies in the record, it is determined that the applicant has failed to establish by a preponderance of the evidence that he entered the United States prior to January 1, 1982, and resided in an unlawful status through May 4, 1988.

The director also determined that the applicant failed to provide of his follow-up medical treatment as recommend by the civil surgeon.

On appeal, counsel asserts that the applicant submitted the required documentation to CIS in Chicago, where he had submitted his previous requests for work authorizations. The applicant submits the requested documentation. Nonetheless, the applicant has failed to submit sufficient documentation to establish his continuous residence in the U.S. for the required period.

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