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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC 02 144 60462

Office: LOS ANGELES

Date: **APR 01 2008**

IN RE: Applicant: [REDACTED]

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: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits [or Records] Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status from that date through May 4, 1988.

On appeal, the applicant submits a brief statement and additional documentation.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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 states 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.

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)(vi)(L).

While there is no specific regulation that governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements that affidavits are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information that 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)(i), letters from employers attesting to an applicant's employment must provide: the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and, identify the location of such company records and state whether such records are accessible or, in the alternative, state the reason why such records are unavailable. The regulation further allows 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.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(v), 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.

Nevertheless, an affidavit not meeting all the foregoing requirements may still merit consideration as "any other relevant document" pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In a Notice of Intent to Deny (NOID), dated October 26, 2005, the district director determined that the applicant had failed to submit sufficient evidence demonstrating his continuous unlawful residence in the United States during the requisite time period. Specifically, the district director noted that the applicant had submitted documentation that was not credible (Nos. 5 and 6, below) and had provided no documentation to establish his entrance into the United States prior to January 1, 1982. The applicant was provided 30 days in which to submit a rebuttal to the notice.

In response to the NOID, on November 12, 2005, the applicant submitted additional documentation and a letter stating that he wished to disavow the accusation that he had submitted fraudulent documentation regarding the 1981 REDIFORM and 1982 Try-It Battery Co., Inc., receipts. The applicant further stated that he had submitted other relevant documents and did not have a pressing need to provide false/fraudulent documentation.

In a Notice of Decision (NOD), dated December 20, 2005, the district director determined that the applicant had failed to respond to the NOID and denied the application based on the reasons stated in that notice. The record reveals, however, that the applicant had, in fact, responded to the NOID by providing additional documentation (Nos. 9, 10, 11 and 12, below).

On appeal, the applicant states that he had responded to the NOID and resubmits photocopies of documentation previously provided. The applicant also indicates that his spouse has been approved adjustment of status to permanent resident under the LIFE Act and requests that his application be positively reconsidered.

The record reflects that 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:

1. A letter, dated July 18, 2003, from [REDACTED], Pastor of Mary Immaculate Church, Pacoima, California, stating that the applicant had provided photographs indicating that he and his spouse were active in the parish in 1982.
2. A photocopy of a letter, dated August 1, 2003, from [REDACTED] North Hollywood, California, stating that he had personal knowledge that the applicant resided in Pacoima, California, from 1980 to 2001, and in Granada Hills, California, since 2001. While the affidavit is accompanied by proof of identification and evidence that Mr. [REDACTED] resided in California for the relevant period, the letter is not notarized and it does not indicate the affiant's relationship with the application, how he dates his acquaintance with the applicant, or how often and under what circumstances he had contact with the applicant during the requisite period, and otherwise lacks any details that would lend credibility to an alleged 23 year relationship with the applicant. It is unclear as to on what basis [REDACTED] claims to have direct and personal knowledge of the events and circumstances of the applicant's residence in the United States; as such, the statement can be afforded minimal weight as evidence of the applicant's residence and presence in the United States for the requisite period.
3. A photocopy of a notarized letter, dated October 1, 2003, from the applicant's aunt, [REDACTED], Pacoima, California, stating that the applicant and his spouse resided in her house from 1980 to 1996. While the letter is accompanied by proof of identification and evidence that [REDACTED] resided in California for the relevant period, no corroborative evidence has been established that the applicant resided with her during that time period other than the documentation provided in No. 9, below.
4. A photocopy of a check, dated March 27, 1983, issued to the applicant by [REDACTED] [REDACTED] Los Angeles, California.

5. A photocopy of a receipt issued to the applicant by Try-It Battery Co., Inc., No. Hollywood, California, with a date - September 27, 1982 - on which the year of issuance appears to have been altered.
6. A photocopy of a REDIFORM receipt, issued to the applicant on April 24, 1981. The district director noted in the NOID that although the receipt is dated 1981, the logo on the receipt was not introduced until 1984.
7. A photocopy of an employment letter, dated August 12, 1993, from [REDACTED] of Hermandad Mexicana Nacional, North Hollywood, California, stating that the applicant worked for him at his home in Glendale, California, as a handyman from April 1980 to August 1985. The letter fails to provide adequate information according to the guidelines provided under 8 C.F.R. § 245a.2(d)(3)(i), as noted above.
8. A photocopy of a second letter from [REDACTED], stating that the applicant worked for Hermandad Mexicana Nacional from September 1, 1985 to January 30, 1986. This letter also fails to provide adequate information according to the guidelines provided under 8 C.F.R. § 245a.2(d)(3)(i).
9. Photocopies of envelopes, stamped in May and June of 1980 showing the applicant's return address in Pacoima, California.
10. A second letter, dated November 7, 2005, from the pastor of Mary Immaculate Church, stating that the applicant and his spouse attended the church from 1981 through 1985, through the presence of Hermandad Mexicana, educating people about civic duties and helping people register to vote. The letter does not show the applicant's inclusive dates of membership, where the applicant resided during the membership period, or establish the origin of the information being attested to.
11. A letter, dated November 7, 2005, from the pastor of St. Didacus Church, Sylmar, California, stating that the applicant had been a registered parishioner since 1986.
12. A photocopy of a letter, dated November 8, 2005, from the facility director of the [REDACTED] Pacoima Recreation Center, stating that the applicant had been a volunteer since 1981. While not required, the letter is not accompanied by proof of the affiant's identification or association with the organization, and the statement is not on letterhead stationery, is not notarized, and is not supported by any objective records verifying the applicant's volunteer work.

Upon review of all the evidence in the record, the AAO determines that the submitted evidence is not sufficiently relevant, probative, and credible to meet the applicant's burden of proof.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon few documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through December 31, 1987.

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).

Given the insufficiency in the evidence, 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) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, he is ineligible for permanent resident status under section 1104 of the LIFE Act.

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