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U.S. Citizenship
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Services

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[REDACTED]

FILE:

MSC 02 344 61886

Office: NEW YORK

Date:

APR 11 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:

[REDACTED]

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.

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, New York, 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 through May 4, 1988.

On appeal, applicant attempts to explain more details regarding his inability to present more substantial documentation. He attaches previously submitted documentation. Applicant also contends that he never received the Notice of Intent to Deny (NOID).

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 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 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).

In the NOID, dated on April 3, 2006, the director stated that the applicant failed to establish by a preponderance of the evidence that he entered the United States prior to January 1, 1982, and continuously resided in the United States during the requisite period. The director granted the applicant thirty (30) days to submit additional evidence. The record reflects that evidence was received from the applicant on April 13, 2006. The director stated that the applicant did not submit any new evidence to prove his claim. In the Notice of Decision, dated on April 18, 2006, the director determined that the applicant failed to overcome the grounds for denial, noting discrepancies in the applicant's testimony and evidence. On appeal, the applicant submits his own letter attempting to explain the lack of substantial documentation to support his claim. No new evidence was submitted.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered the United States before January 1, 1982, and continuously resided in the United States in an unlawful status during the requisite period. Here, the applicant has failed to meet this burden.

In support of his application, the applicant submitted a report from Allstate, dated on May 27, 2004. The applicant contends that his inability to provide documentation to support his claim stems from a fire that destroyed relevant evidence. The Allstate report indicated that the insured, [REDACTED] reported a claim for fire and smoke damage throughout the house on November 9, 1987. The report stated that the insured resided at [REDACTED] Jamaica, New York 11435-3619. The report indicated that the fire started in the basement, spread up to the first and second floor, and the house was uninhabitable. The report failed to mention the applicant's name. In fact, nothing in the record indicates that the applicant ever resided at the address where the fire occurred. The report provides no probative value.

The record includes a sworn affidavit by [REDACTED] dated on April 1, 2004. [REDACTED] stated that he has known the applicant since on or before July 1979. [REDACTED] stated that the applicant came to the United States on October 1981 and has only left the country once for a brief period in 1987. The affiant provided his address of residence. The affiant failed to state the applicant's place of residence during the statutory period. Although not required, the affidavit failed to include any supporting documentation of the affiant's presence in the United States during the requisite period. The affiant failed to indicate how he dated his acquaintance with the applicant, how he met the applicant or how frequently he saw the applicant. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of the affiant.

The record also includes a sworn affidavit by [REDACTED], dated on April 1, 2004. [REDACTED] stated that she has known the applicant since October 1981. The affiant provided her address of residence and telephone number. The affiant failed to state the applicant's place of residence during the statutory period. Although not required, the affidavit failed to include any supporting documentation of the affiant's presence in the United States during the requisite period. The affiant failed to indicate how she dated her acquaintance with the applicant, how she met the applicant or how frequently she saw the applicant. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of the affiant.

Although the applicant has submitted two affidavits in support of his application, the applicant has not provided sufficient credible evidence of entry into the United States prior to January 1, 1982, or continuous unlawful residence in the United States during the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. None of the affiants provided any corroborating evidence that the applicant entered the United States before January 1, 1982. The affidavits fail to appear credible as there is no proof that affiants have direct personal knowledge of the events and circumstances of the applicant's residency. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period.

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. Given the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States during the requisite period.

On appeal, the applicant also contends that he never received the NOID. It is noted that the record reflects that the NOID, dated April 3, 2006, was mailed to the applicant's address of record. It is also noted that the record reflects that evidence was received from the applicant on April 13, 2006. Thus, AAO finds the applicant's claim to lack credibility.

Therefore, based on the above discussion, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988 as required under Section 1104(c)(2)(B) of the LIFE Act. 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.