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U.S. Citizenship
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FILE:

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Office: LOS ANGELES

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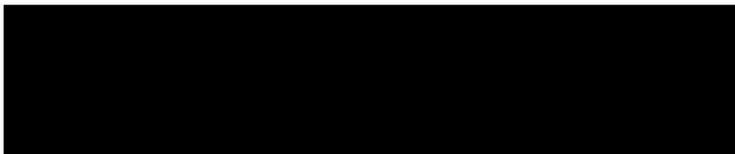
Applicant:



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. If your appeal was dismissed or rejected, all documents have been returned to the National 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, 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 continuously resided in the United States in an unlawful status since before January 1, 1982, through May 4, 1988.

On appeal, counsel asserts that the applicant has provided sufficient evidence establishing that he is eligible to adjust status under the LIFE Act. Counsel provides a letter 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).

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 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, the applicant stated that he first entered the United States in February 1981, when he crossed the border without inspection. On his Form I-687, Application for Status as a Temporary Resident, which he signed under penalty of perjury on February 22, 1990, the applicant stated that he worked as a self-employed ice cream vendor from July 1981 to August 1985, and for another employer (the name is illegible) in Fresno, California from August to September 1987. The applicant also stated that he lived at [REDACTED] in Los Angeles from January 1981 (a month before he alleges he entered the United States) to the date of his Form I-687 application.

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant submitted the following evidence:

1. An undated statement from [REDACTED], in which he stated that the applicant had lived in Los Angeles from August 1981 to the "present." According to [REDACTED], the applicant worked selling ice cream and came to his company every afternoon. [REDACTED] did not indicate how he dated his knowledge of the applicant's presence in the United States.
2. A January 13, 2001, affidavit from [REDACTED], in which she stated that she had known the applicant for the past 20 years, and that she worked with the applicant's wife.
3. A January 7, 2006, sworn statement from [REDACTED] in which she stated that she has known the applicant since 1985 and that they have been good friends for many years. [REDACTED] did not state the circumstances surrounding her initial acquaintance with the applicant or that the applicant had been present and residing in the United States during the period of their acquaintance.

On January 10, 2006, the director issued a Notice of Intent to Deny in which she notified the applicant that his evidence was insufficient to meet his burden of proof and provided him with 30 days in which to submit additional evidence. In response, counsel asserted that, pursuant to CIS policy and *Matter of E-M-*, the applicant's testimony during his LIFE Act interview and the affidavits he submitted are sufficient to establish his eligibility for adjustment of status under the LIFE Act. Counsel repeats this argument on appeal.

As stated in *Matter of E-M-*, the evidence must be evaluated not only on its quantity but also on its quality. While affidavits in certain cases can effectively meet the preponderance of evidence standard, the applicant has not met that standard in this case. The applicant submitted only three statements or affidavits, two of which are from close friends. The third is an undated and unsworn statement that does not establish how the writer was able to conclusively state that the applicant was present and living in the United States in August 1981. The applicant submitted no contemporaneous documentation such as postmarked envelopes or similar documentation to establish that he lived in the United States during the required period. The applicant's evidence is lacking in both quantity and quality and fails to establish by a preponderance of the evidence that he resided in the United States during the requisite period. Accordingly, it is concluded that the applicant has failed to establish continuous residence in the U.S. for the required period.

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