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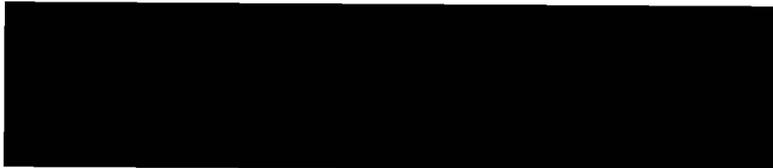
Date: APR 29 2008

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. The file has been returned to the National Benefits Center. 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, Newark, New Jersey, 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 then through May 4, 1988.

On appeal, counsel for the applicant submits a brief statement.

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.

The regulations at 8 C.F.R. § 245a.2(d)(3) provide an illustrative list of contemporaneous documents that an applicant may submit.

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), 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. *See* 8 C.F.R. § 245a.2(d)(3)(v).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that 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.

While affidavits "may" be accepted (as "other relevant documentation") [*See* 8 C.F.R. § 245a.2(d)(3)(vi)(L)] in support of the applicant's claim, the regulations do not suggest that such evidence alone is necessarily sufficient to establish the applicant's unlawful continuous residence during the requisite time period.

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. An affidavit, dated April 27, 1990, from [REDACTED] of Norton, Massachusetts, stating that the applicant resided at [REDACTED], Franklin Square, New York, from August 1981 to February 1990.
2. An affidavit, dated April 27, 1990, from [REDACTED] of Paterson, New Jersey, stating that the applicant resided at [REDACTED], Franklin Square, New York, from August 1981 to February 1990.
3. An affidavit, dated May 2, 1990, from [REDACTED] of East Windsor, New Jersey, stating that the applicant, residing in Lawndale, California, entered the United States in July 1981, and left for one month in July 1987.

4. An affidavit, dated February 5, 1990, from [REDACTED] of [REDACTED] Landscaping and Maintenance, [REDACTED] Franklin Square, New York, stating that the applicant was a permanent employee from August 1981 to February 5, 1990, at a salary of \$150 per week, and was provided residence on the premises.
5. An affidavit, dated November 30, 2003, from [REDACTED] of Haledon, New Jersey, stating that she has known the applicant as a friend since 1981 when she lived in Bronx, New York.
6. An affidavit, dated February 17, 2004, from [REDACTED] of Bronx, New York, stating that she has known the applicant as a friend since meeting him at her brother's house in Roosevelt, New York, in 1981.
7. An affidavit, dated February 18, 2004, from [REDACTED] of Haledon, New Jersey, stating that he and the applicant were roommates from 1981 to 1989 in Long Island, New York.
8. An affidavit, dated January 20, 2004, from [REDACTED] of Brooklyn, New York, stating that he has known the applicant as a friend since 1981, and that they worked together in Long Island, New York, until February 1990.
9. A hand-written letter, dated December 2005, from [REDACTED] of Jersey City, New Jersey, stating that the applicant was seen as a patient at his office on October 14, 1981, an illegible date in 1982, and November 12, 1985.

In a Notice of Intent to Deny (NOID), dated December 9, 2005, the district director determined that the applicant had failed to submit sufficient evidence demonstrating his continuous unlawful residence in the United States from prior to January 1, 1982, through May 4, 1988. In a Notice of Decision (NOD), dated March 22, 2006, the district director denied the application based on the reasons stated in the NOID.

On appeal, counsel for the applicant asserts "the applicant has submitted specific affidavits with personal knowledge of the applicant's whereabouts. Moreover the applicant's testimony was consistent with his application. Taken together, the applicant's testimony and corroborative affidavits establish his eligibility under the LIFE Act."

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

Although the applicant has submitted affidavits in support of his application, he has provided no contemporaneous evidence of 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. While not required, the affidavits provided in Nos. 1, 2, 3, 4, 5, and 6, above, are

not accompanied by proof of the identification of the affiants. These affidavits, as well as those noted in Nos. 7 and 8, are also not accompanied by any evidence that the affiants actually resided in New York during the relevant period. They also lack details regarding the basis of the affiants' direct and personal knowledge of the events and circumstances of the applicant's residence in the United States. The letter from [REDACTED] (No. 9) is not notarized, does not provide the applicant's address(es) at the time he was a patient, and does not explain the origin of the information being attested to. As such, the documentation provided can be afforded only minimal weight as evidence of the applicant's residence and presence in the United States for the requisite period.

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 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)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b).

It is concluded that the applicant has failed to establish that he resided in continuous unlawful status in the United States from before January 1, 1982, through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act. Thus, 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.