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U.S. Citizenship
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Services

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FILE:



MSC 03 259 62075

Office: LOS ANGELES

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:

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 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 "Robert P. 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. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The district director denied the application on the ground that the applicant failed to establish that he had entered the United States before January 1, 1982, and had resided continuously in the United States from then through May 4, 1988.

On appeal, the applicant submits a letter and additional documentation.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. See section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

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 its amenability to verification. See 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 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.

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

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.

The applicant filed his Form I-485, Application to Register Permanent Resident or Adjust Status, under the LIFE Act June 16, 2003. In support of the application the applicant submitted:

1. A "verification of employment" form-letter, dated January 2, 1991, from a person (the signature is illegible) stating that the applicant was employed (paid in cash) at Guario Café Restaurant, Wilmington, California, since May 1985 as a dishwasher and maintenance person.
2. An affidavit, dated January 2, 1991, from his cousin, [REDACTED] of Wilmington, California, stating that the applicant had resided with him since 1981.
3. An affidavit, dated May 8, 1991, from [REDACTED], stating that the applicant lived with him from January 1981 to December 1984 at [REDACTED] Wilmington, California.
4. An undated letter from [REDACTED], pastor of Holy Family Trinity Church, Wilmington, California, stating that the applicant had been a member since August 1981.

In the Notice of Intent to Deny (NOID), dated April 15, 2006, the district director notified the applicant that he had failed to provide sufficient documentation to establish his continuous residence in the United States during the requisite time period. The district director granted the

applicant 30 days to submit additional evidence and/or provide a rebuttal to the notice. The record reflects that the applicant failed to respond.

On May 25, 2006, the district director denied the application for the reason stated in the NOID. The applicant filed a timely appeal from that decision on June 23, 2006. On appeal, the applicant submits the following additional documentation:

5. Photocopies of two generic un-translated rent receipts, dated 1982.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO concludes that he has not.

The applicant has not provided any contemporaneous evidence for the years 1982-1988 that demonstrates his residence in the United States during that time. The affidavits provided by Mr. [REDACTED] (No. 2, above) and [REDACTED] (No. 3) contain conflicting information and, while not required, are not accompanied by proof of the affiants' identification or any evidence that they resided in Wilmington, California, during the relevant period. With regard to No. 5, the numbers "8" and "2" in "1982" appear to have been altered.

Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

The inconsistencies noted and lack of documentation corroborating the applicant's claim of continuous residence and continuous physical presence for the requisite time period detract from the credibility of his claim. In accordance with 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 its amenability to verification. Given the applicant's reliance upon minimal documentation with little probative value, he has failed to establish his continuous residence in an unlawful status in the United States from before January 1, 1982, through May 4, 1988.

Thus, the applicant has failed to establish his entry into the United States prior to January 1, 1982, and his continuous unlawful residence in the United States for the time period specified in section 1104(c)(2)(B)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A). Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

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