



U.S. Citizenship
and Immigration
Services

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FILE:



Office: LOS ANGELES

Date:

APR 30 2008

MSC 02 169 63211

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. 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, Los Angeles, 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, counsel submits documentation and asserts that the reasons for appeal are found in the documentation. Counsel attaches a copy of his rebuttal to the Notice of Intent to Deny, a new affidavit, and a U.S. Citizenship and Immigration Services interoffice memo.

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).

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.

In the Notice of Intent to Deny (NOID), dated on May 6, 2005, the director stated that the applicant submitted various receipts that are of questionable validity. The director granted the applicant thirty (30) days to submit additional evidence. In a June 7, 2005, rebuttal, counsel contended that the evidence submitted was sufficient to establish the applicant's claim. In the Notice of Decision, dated June 17, 2005, the director denied the instant applicant based on the reasons stated in the NOID.

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 an unlawful status in the United States during the requisite period. Here, the applicant has failed to meet this burden.

In support of the applicant's claim, the record contains the following relevant evidence:

1. A January 24, 2002, sworn affidavit by [REDACTED], who stated that she has personal knowledge that the applicant has resided in Sun Valley, California, from March 1981 to December 1988. The affiant stated that she has known the applicant for 7 years in Sun Valley, California. The affiant provided her occupation, place of residence, and a photocopy of her U.S. certificate of naturalization. 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 affiant also failed to indicate the applicant's specific place of residence during the requisite period. The lack of details deters from the credibility of the affiant.
2. A January 11, 2002, declaration by [REDACTED], who stated that the applicant worked as his gardener assistant for 6 years, from August 1981 to September 1987. The declarant stated that the applicant worked Monday through Thursday and was paid \$50 per day. The declarant provided his place of address and telephone number. The declarant failed to provide the applicant's address at the time of employment, 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 as required under the

regulation at 8 C.F.R. § 245a.2(d)(3)(i). The lack of sufficient details detracts from the credibility of the declarant.

3. Eleven receipts for registered mail which contain the applicant's name and are postmarked in 1981, 1982, 1983, 1984, 1985 and 1987. All of the receipts indicate that the applicant resided at [REDACTED] Sun Valley, LA 91352. On the reverse side of all the postal receipts, a preprinted date has been blacked-out to hide the original date. These revisions seriously bring into question the credibility of the evidence.
4. A receipt for clothing, dated March 20, 1986, which contains the applicant's name. The receipt does not contain any verifiable information, such as a business address or telephone number. The receipt does not include the applicant's place of address. This receipt provides minimal probative value.
5. A West Oaks Urgent Care Center Medical Release Form, which contains the applicant's name, dated May 13, 1983. The form indicates that the applicant suffered an industrial injury or illness. It is signed by employer, [REDACTED] (illegible). It is noted that the record contains a Form I-687, Application for Temporary Resident Status pursuant to Section 245A of the Immigration and Nationality Act, signed by the applicant. In his Form I-687, the applicant failed to state that he was ever employed by [REDACTED]. This discrepancy brings into question the credibility of this evidence.
6. Two photocopies of rent receipts, dated February 20, 1981 and April 20, 1981, which indicate that the applicant paid \$190 for rent at [REDACTED] Sun Valley, CA 91352. It is signed by [REDACTED] (illegible). The record also contains two additional photocopies of rent receipts, dated August 15, 1985, and October 15, 1985. These two receipts indicate that the applicant paid \$225 for rent at [REDACTED] Sun Valley, CA 91352. It is signed by same landlord.
7. A May 24, 2005, an affidavit of witness by [REDACTED] who stated that she met the applicant at a party in Sun Valley. The affiant stated that they had friends in common. She further stated that the applicant lived at [REDACTED] Sun Valley, California. She certified that the applicant had been physically present in the United States since 1982. The affiant provided her place of residence, a copy of her California driver's license, a copy of her permanent resident card, and the applicant's current place of residence.

The applicant has submitted various types of evidence in support of his claim. The applicant submitted numerous postal receipts to substantiate his claim. However, the postal receipts appear to be altered to hide an original preprinted date. In rebuttal, counsel contends that the applicant received the receipts in this condition. However, his assertion fails to adequately explain why all of the receipts dated from 1981 through 1987 are altered in an identical manner.

The record also contains a discrepancy regarding the applicant's employment during the statutory period. The affidavit of ██████████ stated that the applicant worked for him from August 1981 to September 1987. In his Form I-687, the applicant also stated the same fact. However, the West Oaks Urgent Care Center Medical Release Form is signed by a different employer. This discrepancy further detracts from the credibility of the applicant's claim.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The record contains no independent objective evidence to explain the above inconsistencies.

Although the applicant has also submitted affidavits in support of his application, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The record application includes serious discrepancies that the applicant has failed to resolve. Those discrepancies raise serious concerns about the veracity of the applicant's assertions. In addition, the supporting affidavits lack detailed information. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period further detracts from the credibility of his claim. 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 discrepancies and 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.

Beyond the decision of the director, the record reflects that on November 25, 1988, the applicant was arrested at San Ysidro, California (Case ██████████) and charged with *deportation proceedings for attempting illegal entry* into the United States.

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.