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Office: SALT LAKE CITY

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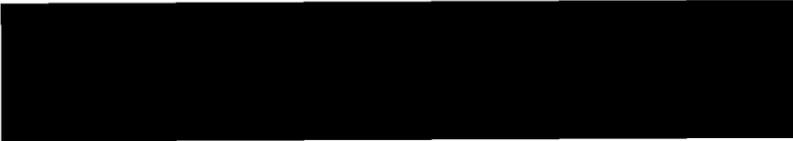
IN RE: Applicant:



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, Salt Lake City, Utah, 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 for the applicant submits a brief and states that the evidence submitted establishes the applicant's eligibility. Counsel submits some of the same evidence already submitted on appeal.

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 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 October 27, 2005, the director stated that the applicant failed to submit sufficient evidence demonstrating his continuous unlawful residence in the United States during the requisite period. The director stated that the applicant's testimony and the evidence submitted lacked credibility and probative value. The director granted the applicant thirty (30) days to submit additional evidence.

The record reflects that counsel's response to the NOID consisted of a legal brief and additional evidence. In the Notice of Decision, dated February 14, 2006 the director denied the instant application 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 continuously resided in the United States in an unlawful status during the requisite period. The record reflects that the applicant submitted a letter of employment, affidavits, and tax returns and earnings statements as evidence to support his Form I-485 application. Here, the submitted evidence is not relevant, probative, and credible.

Employment Letter

The applicant submitted a letter of employment from [REDACTED], dated February 3, 2005, stating that the applicant had been employed as a gardener in her husband's gardening business from January 1982, and he worked on and off over the years. The affiant, however, does not indicate a date in January 1982 when the employment started, or when the employment ended.

The applicant also submitted another letter of employment from [REDACTED], Office Clerk of Leadtec Incorporated, dated August 7, 1990, stating that the applicant was employed from February 28, 1985 through October 31, 1985, and from November 13, 1985 through December 12, 1985. The affiant does not indicate in what capacity the applicant was employed during those periods. The affiant does state that the applicant was hired again on September 3, 1986 as a material handler, however, she did not state how long that period of employment lasted.

Pursuant to 8 C.F.R. § 245a.2(d)(3)(i), letters from employers should be on employer letterhead stationery. The letters of employment are not on original company letterhead stationery. In addition, the affiants failed to provide the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the affiants also failed to 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.

Affidavits

The applicant submitted sworn affidavits from:

- 1) [REDACTED] sworn to on March 4, 2005, attesting that the applicant lived with him at his home in Panarama City, California, from November 1981 until 1984. Mr. [REDACTED] states that he and the applicant have kept their friendship;
- 2) [REDACTED], dated May 12, 2004, attesting that she first met the applicant through a mutual friend in September 1981 while she was living in Panorama City, California. Ms. [REDACTED] states that over the years she has kept in touch with the applicant;
- 3) [REDACTED], dated May 10, 2004, stating that he and the applicant have been friends since October, 1981, when they met in San Fernando, California. Mr. [REDACTED] states that he and the applicant live in Salt Lake City, Utah;
- 4) [REDACTED] dated May 12, 2004, stating that she has known the applicant since October, 1981;
- 5) [REDACTED] dated May 6, 2004, stating that he and the applicant resided at [REDACTED] [REDACTED] Panorama City, California, as co-tenants from October, 1982 to May 1987; and,
- 6) [REDACTED] and from [REDACTED] dated August 14, 1990. Both affiants state that they know the applicant to have resided in the United States from September 1981, and they date their acquaintance with the applicant through their friendship. However, they do not indicate when they became friends and how they maintained the friendship.

Except for [REDACTED] and [REDACTED], none of the other affiants state whether the applicant has been a continuous resident of the United States during the time they have been acquainted or whether the applicant remained in the United States throughout the requisite period.

Also, the applicant submitted a sworn affidavit from [REDACTED] dated May 7, 2004, stating that he and the applicant have been friends since October 1981, when they met in Panorama City, California. It is noted however, that although [REDACTED] indicates that he resides in North Hills, California, he also states that he and the applicant maintain their friendship and they meet

every week to play basketball. This affiant's claim is questionable as it contradicts information in the applicant's Biographic Data Form, Form G-325A, wherein the applicant indicates that he has resided in Salt Lake City, Utah, since 1996. It is highly unlikely that the affiant and applicant would meet weekly to play basketball if they resided in distant states.

In addition, the applicant submitted a letter from [REDACTED] O.M.I., Pastor of the Mary Immaculate Church, located in Pacoima, California. Rev. [REDACTED] states that the applicant was a member of that church from 1984 until 1998, and attended religious services at that church during that period. Rev. [REDACTED]'s claim is questionable, however, as it contradicts information in the applicant's Biographic Data Form, Form G-325A, wherein the applicant indicates that he has resided in Salt Lake City, Utah, since 1996. It is highly unlikely that the applicant would attend church services in a distant state.

It is noted that the applicant also submitted copies of a 1984 Form W-2, Wage and Tax Statement which shows earnings of \$537.68; a copy of page 1, of Federal Income Tax Return, Form 1040, and Form W-2, Wage and Tax Statement, for 1985, 1986, 1987, 1988, and for subsequent years 1989 through 2004. It cannot be determined from the 1984 Form W-2 alone when in 1984 the wages were earned. It is noted that the tax returns and wage and tax statements for the years 1985, 1986, 1987, and 1988, cumulatively establishes the applicant continuous residence from 1985 through 1988. These documents, however, do not establish the applicant's continuous residence throughout the requisite period.

The applicant has submitted two employment letters, affidavits and additional documents in support of his application. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. As noted above, the applicant has submitted questionable documentation, such as the letter from Rev. [REDACTED], and the affidavit from [REDACTED], discussed above. These discrepancies cast doubt on whether the applicant has been in the United States during the entire requisite period as he claims. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and 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 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in his testimony and in the record.

Furthermore, although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period. 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 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 May 4, 1988.

Therefore, based on the above, 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.