



U.S. Citizenship  
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FILE:

MSC 02 012 63385

Office: Los Angeles

Date:

FEB 04 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. All documents have been returned to the office that originally decided your case. 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, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The district director denied the application based upon the determination that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, the applicant contends that the record contains sufficient evidence to support his claim of residence in the United States for the requisite period. The applicant includes copies of previously submitted documents 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 and 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 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.

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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to 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. Here, the submitted evidence is relevant, probative, and credible.

The applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (Act), on April 2, 1990. A review of the Form I-687 application reveals that this document was prepared by an individual other than the applicant. This individual noted that the applicant had used the name [REDACTED] during the requisite period at part #4 of the Form I-687 application. The preparer also indicated that the applicant had been absent from the United States for an unspecified period in April and May of 1989 to visit his ill father in Mexico at part #35 of the Form I-687 application.

In cases where an applicant claims to have met any of the eligibility criteria under an assumed name, the applicant has the burden of proving that he or she was in fact the person who used that name. 8 C.F.R. § 245.2(d)(2)(i).

The most persuasive evidence of common identity is a document issued in the assumed name which identifies the applicant by photograph, fingerprint or detailed physical description. Other evidence which will be considered are affidavit(s) by a person or persons other than the applicant, made under oath, which identify the affiant by name and address and state the affiant's relationship to the applicant and the basis of the affiant's knowledge of the applicant's use of the assumed name. Affidavits accompanied by a photograph which has been identified by the affiant as the individual known to the affiant under the assumed name in question will carry greater weight. Other documents showing the assumed name may serve to establish the common identity when substantiated by corroborating detail. 8 C.F.R. § 245.2(d)(2)(ii).

The applicant submitted a photocopy of a "Work Permit" issued by the Washoe County, Nevada Sheriff's Department for [REDACTED]. This government issued identification document contains a photograph of the applicant. The applicant has met his burden of proving that he was in fact the person who used this name pursuant to 8 C.F.R. § 245.2(d)(2)(ii).

Subsequently, on October 12, 2001, the applicant filed his Form I-485 LIFE Act application. The applicant included a Form G-325A, Report of Biographic Information, in which he listed the date of his marriage in Mexico as April 30, 1988.

In support of his claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted affidavits, employment letters, a government identification card, postmarked envelopes, Social Security printouts, meal tickets, an employee identification card, paycheck stubs, receipts for registered mail, and receipts for certified checks.

In the notice of intent to deny issued on September 28, 2004, the district director questioned the veracity of the applicant's claimed residence in the United States for the requisite period. Specifically, the district director noted that the Social Security printouts submitted by the applicant showed earnings prior to the date he claimed to have entered this country in 1979. Further, the district director stated that the applicant claimed to have been paid in cash for employment that occurred in 1985 and 1986 but the Social Security printouts reflected taxable earnings for the applicant in those same years. In addition, the district director indicated that the applicant listed an absence from the United States in April of 1989 on the Form I-687 application but subsequently indicated that he had been married in Mexico on April 30, 1988 on the Form G-325A biographic report that was included with the Form I-485 LIFE Act application. The district director determined that these discrepancies impaired the credibility of the applicant's claim of residence in this country for the requisite period and granted the applicant thirty days to respond to the notice.

In response to the notice of intent to deny, the applicant submitted a statement in which he indicated that the individual who assisted him in illegally entering this country in 1979 also provided him with the Social Security number and corresponding identification card that he subsequently utilized to gain employment. The applicant acknowledged that any earnings on the Social Security printouts prior to 1979 were not his. The applicant also indicated that he had been paid in cash as well as having earnings subject to Social Security withholding taxes for employment in 1985 and 1986. The applicant provided a photocopy of the document supplied by that individual who assisted him in illegally entering this country in 1979 bearing the Social Security number that the applicant subsequently utilized to gain employment in the United States.

The applicant asserted he had never attempted to hide the fact that he had been absent from this country for a short period in April and May of 1988, but instead had acknowledged this absence on two different documents that were submitted with his Form I-485 LIFE Act application. The applicant noted that his mother had been hospitalized with diabetes in Mexico during this period and that he and his longtime girlfriend decided to marry on this occasion. The applicant contended that any discrepancies in his testimony relating to this absence arose because English is not his first language. As has been discussed above, the applicant provided a Form G-325A biographic report in which he acknowledged being in Mexico for short period from late April of 1988. It appears that the applicant was being truthful in listing this absence and that the individual who previously prepared the Form I-687 application omitted this absence in preparing the document.

The explanations put forth by the applicant and the documents included with his response appear to reconcile any purported conflicts cited by the district director. The applicant submitted an affidavit, four postmarked envelopes, and two receipts for registered mail to further support his claim of residence in this country for the requisite period. Consequently, the inconsistencies cited by the district director are minimal and cannot be considered as fatal to the applicant's claim of continuous residence in the United States from prior to January 1, 1982 to May 4, 1988.

The statements of the applicant on appeal regarding the amount and sufficiency of his evidence of residence, as well as the significant and considerable passage of time have been considered. In this instance, the applicant submitted evidence, including affidavits, employment letters, and contemporaneous documents, which tends to corroborate his claim of residence in the United States during the requisite period. The district director has not sufficiently established that the information in this evidence was inconsistent with the claims made on the application, or that it was false information. As stated in *Matter of E-M-*, when something is to be established by a preponderance of evidence, the proof submitted by the applicant has to establish only that the assertion or asserted claim is probably true. *Id.* That decision also points out that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. The documents that have been furnished may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

The documentation provided by the applicant establishes by a preponderance of the evidence that he satisfies the statutory and regulatory criteria of entry into the United States before January 1, 1982, as well as continuous unlawful residence in the country during the ensuing time frame of January 1, 1982 through May 4, 1988, as required for eligibility for legalization under section 1104(c)(2)(B)(i) of the LIFE Act. Consequently, the applicant has overcome the basis of denial cited by the district director.

Accordingly, the applicant's appeal will be sustained. The district director shall continue the adjudication of the application for permanent resident status.

**ORDER:** The appeal is sustained.