



U.S. Citizenship
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Services

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FILE:

MSC 02 247 61591

Office: CHICAGO

Date:

FEB 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. All documents have been returned to 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, Chicago, Illinois, 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 had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

On appeal, counsel for the applicant submits a brief.

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 district 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).

While there is no specific regulation which governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements which affidavits are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information which 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).

Nevertheless, an affidavit not meeting all the foregoing requirements may still merit consideration as "any other relevant document" pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must be on employer letterhead stationery, if the employer has such stationery, and must include the following:

- (A) Alien's address at the time of employment;
- (B) Exact period of employment;
- (C) Periods of layoff;
- (D) Duties with the company;
- (E) Whether or not the information was taken from official company records; and
- (F) Where records are located and whether the Service may have access to the records.

The regulation further allows that if official company records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and explaining why such records are unavailable may be submitted in lieu of meeting the requirements at (E) and (F) above.

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:

Envelopes (originals and photocopies) addressed to the applicant in the United States. The post-mark dates on the envelopes are illegible; therefore, they have little probative value.

A notarized affidavit, dated March 2, 1990, from [REDACTED] stating he had known the applicant since 1981 and used to meet at his work place. The affiant does not

indicate at which workplace and where they met, the specific dates of the applicant's continuous residence to which the affiant can personally attest, or the address(es) where the applicant resided throughout the period which the affiant had known the applicant.

- A notarized affidavit, dated March 2, 1990, from [REDACTED] stating that he had known the applicant for 9 years and that he used to often see him at the library. The affiant does not indicate the specific dates of the applicant's continuous residence to which the affiant can personally attest, the address(es) where the applicant resided throughout the period which the affiant had known the applicant, or the means by which the affiant could be contacted.
- A notarized affidavit, dated May 30, 2002, from [REDACTED] stating that he had known the applicant since January 1983 when he was working as a car mechanic in Worth, Illinois. The affiant gives his address and the applicant's address at the time the affidavit was signed.
- Other documentation dated in and after 1988, and photocopies of identification cards issued to the applicant in 1990. Because these documents are dated in and after 1988, they do not confirm that the applicant resided in the United States during the requisite time period.

On February 23, 2005, the district director issued a Notice of Intent to Deny (NOID) advising the applicant that he was ineligible for Adjustment of Status under the provisions of the LIFE Act based on insufficient documentation. The director provided the applicant with thirty days during which he might submit additional evidence of having resided unlawfully in the United States during the statutory period. In response, the applicant submitted:

- A notarized affidavit, dated March 17, 2005, from [REDACTED], stating that he had known the applicant since January 1984.
- A notarized affidavit, dated March 17, 2005, from [REDACTED] stating that he had known the applicant since January 1983.
- A notarized affidavit, dated March 17, 2005, from [REDACTED], stating that he had known the applicant since January 1982.
- A notarized affidavit, dated March 17, 2005, from [REDACTED] stating that he had known the applicant since 1984.
- A notarized affidavit, dated March 17, 2005, from [REDACTED], stating that he had known the applicant since February 1985.

Each of the above affidavits submitted in response to the NOID contains alterations (white-outs) regarding the date ["...known...since _____ (date)"] and applicant's name ["...I would personally accompany _____ (applicant's name) ..."]. These alterations raise questions about the authenticity of the documents the applicant has presented in attempt to establish continuous unlawful residence in the United States prior to January 1, 1982 through May 4, 1988. Furthermore, the affiants all attest that they personally accompanied the applicant "...to each and every court date set by this court, would serve as his interpreter and would offer transportation to and from court, housing accommodations and anything in [the affiant's] power to ensure that the respondent [applicant's name] would not violate any terms of a assurity [sic] bond set by this court." The affiants do not give any additional details regarding the basis for their acquaintance with the applicant, the address(es) where the applicant resided throughout the period which they had known the applicant, or the means by which they could be contacted.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

The district director denied the application on April 18, 2005, after concluding that the applicant had failed to provide sufficient 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 through May 4, 1988. The applicant, through counsel, filed his current appeal from that decision on May 2, 2005.

On appeal, counsel submits a brief stating that the district director did not examine, consider, and give proper weight to the documentation provided by the applicant.

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 insufficiencies and alterations in the evidence provided, 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 noted that as a result of being fingerprinted in connection with his application, Citizenship and Immigration Services (CIS) received a report from the Federal Bureau of Investigation (FBI) indicating that the applicant was arrested on January 5, 2003, in Park Ridge, Illinois, and charged

with one count each of Endanger Child/Cause Death, DUI/Alcohol, Insurance – Operate Uninsured, Improper Equipment, and DUI/Alcohol. In any future proceedings before CIS, the applicant must submit evidence of the final court dispositions of these and any other charges against him.

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