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and Immigration
Services

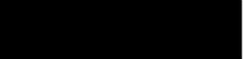
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Office: BALTIMORE

Date: JAN 18 2008

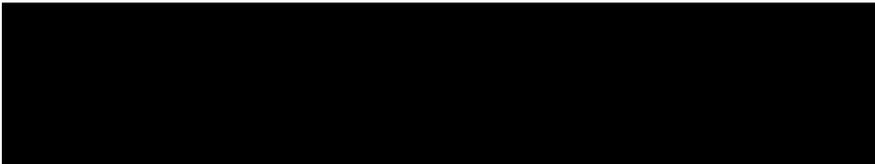
MSC 02 235 61865

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, Baltimore, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to establish that he entered the United States before January 1, 1982, and that he resided continuously in the United States in an unlawful status since that date through May 4, 1988.

On appeal, counsel asserted that the director's decision is an abuse of discretion and contrary to the law in denying the applicant's application for adjustment of status under the LIFE Act. Counsel indicated that a brief and/or evidence would be submitted to the Administrative Appeals Office within 30 days.

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.

The regulation at 8 C.F.R. § 245a.2(d)(3)(iv) states that hospital or medical records showing treatment or hospitalization of the applicant or his or her children must show the name of the medical facility or physician and the date(s) of the treatment or hospitalization.

In the Notice of Intent to Deny (NOID), dated November 24, 2004, the director stated that the applicant failed to submit any credible documentary evidence establishing his claimed entry into the United States in March 1980 and continuous unlawful presence during the requisite period that meets the standards of acceptable evidence as provided in 8 C.F.R. § 245a.2(d). The director granted the applicant thirty (30) days to submit a rebuttal or additional evidence.

Counsel submitted two affidavits by the applicant in rebuttal to the NOID. In the first affidavit, the applicant described his attempt to locate two previous employers and a former physician. The applicant stated that he was unsuccessful in locating his former employers and physician. In the second affidavit, the applicant attempted to reconcile the discrepancies noted in the NOID. To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6).

In the Notice of Decision (NOD), dated August 6, 2005, the director determined that applicant's affidavits failed to overcome the reasons for denial stated in the NOID. The director denied the instant application and determined that the applicant was ineligible for adjustment of status under LIFE Legalization.

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 before January 1, 1982, through the duration of the requisite period. Here, the submitted evidence is not sufficient.

The applicant submitted two letters of employment.

1. An April 24, 1990, letter by [REDACTED] manager of [REDACTED]'s Deli and Grocery, who stated that the applicant was employed by the company from May 1980 to the present. [REDACTED] also stated that the company records showed that the applicant's income was \$10,000.00 from May 1980 to the present. [REDACTED] also provided the applicant's current address.
2. A March 19, 1990, letter by [REDACTED] office manager of Beak Brokerage Services, who certified that the applicant was employed by the firm as a cleaner since January 1987. [REDACTED] stated that the applicant took a leave of absence in December 1987 and returned in March 1988.

As the director mentioned in the NOID, both letters of employment fail to declare whether the information was taken from company records, 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 by 8 C.F.R. § 245a.2(d)(3)(i). In the letter of employment from Beak Brokerage Services, [REDACTED] also failed to provide the applicant's address at the time of employment as required by 8 C.F.R. § 245a.2(d)(3)(i). In response to the NOID, applicant claims that simply because the letters do not contain the requisite information does not negate the authenticity of the letters. On the contrary, the absence of the required information combined with the fact that the letters of employment were unverifiable and that the applicant was not able to produce any corroborating evidence of his employment seriously brings into question the authenticity of the letters, as well as the credibility of the applicant's claim.

The applicant also submitted a November 14, 1989, letter by [REDACTED] who stated that he treated the applicant for recurrent bursitis left shoulder in September 1981. While the affiant indicated he treated the applicant for a recurrent medical condition, he did not indicate the specific dates of treatment as required under 8 C.F.R. § 245a.2(d)(3)(iv). Also, the applicant did not provide any supporting documentation, such as medical records or bills/receipts, to lend credibility to the affiant's statement.

The applicant also submitted eight date-stamped envelopes sent from Ghana to the applicant in the United States. The record reflects six envelopes stamped from 1980 to 1983, one envelope date-stamped in 1986, and one envelope date-stamped in 1988. The applicant has not accounted for the time period from 1984 to 1986 and 1987. This time gap brings into question whether the applicant was present in the United States for the duration for the requisite period. It is also remarkable that the applicant provided at least one alleged original, date-stamped correspondence from each year during the requisite period, with the noted exceptions, but he was unable to submit other original documentation from his claimed residency in the United States, such as employee pay stubs, bank statements, medical records/bills, receipts, etc.

The applicant also submitted three form affidavits of witness, dated in August 1989, subscribed and sworn to by [REDACTED], and [REDACTED]. All three affiants stated that they have personal knowledge the applicant has resided in the United States from March 1980 to the present. They also provided their addresses. [REDACTED] stated that he is a family friend and a neighbor. [REDACTED] stated that he met the applicant at a party. [REDACTED] stated that he is a family friend.

Although not required, none of the affidavits included any supporting documentation of the affiant's identity or presence in the United States or of their relationship with the applicant.

The applicant provided a sworn affidavit of residence by [REDACTED] dated September 18, 1989. [REDACTED] stated that he has known the applicant since 1981 and he met the applicant at a party and through discussion discovered that they are cousins. [REDACTED] provided his address. Although not required, the affiant did not include any supporting documentation of the affiant's identity or presence in the United States.

The applicant also provided a sworn affidavit of residence by [REDACTED] dated April 20, 1990. [REDACTED] stated that the applicant has lived with him since March 20, 1980 to the present. [REDACTED] stated that the rent receipts and household bills were in his name and the applicant contributed toward the payment of rent and household bills. [REDACTED] so provided his address. Although not required, the affiant did not include any supporting documentation of the affiant's identity or presence in the United States, such as a rental agreement or household bills which would bolster the affiant's claim.

In connection with his Form I-687, Adjustment of Status to Temporary Resident, the applicant indicated an absence from the United States from June 1987 to July 1987. The applicant submitted a sworn and notarized letter by [REDACTED] dated November 1, 1993. [REDACTED] stated that on June 6, 1987, he drove the applicant to Montreal and drove him back to New York on July 6, 1987. The affiant provided specific details regarding the route travelled, as well as the identification the applicant used at the Canadian border. The applicant also submitted a February 7, 1990, notarized letter by [REDACTED] who testified that the applicant visited her in Montreal, Canada, from June 6 to July 6, 1987. As with the previous affidavits, none of the letters included any supporting documentation of the affiant's identity or presence in the United States or of their relationship with the applicant.

Although the applicant has submitted numerous affidavits in support of his application, the applicant has not provided any credible, contemporaneous evidence of residence in the United States during the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The absence of sufficiently detailed and supported 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 December 31, 1987.

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.