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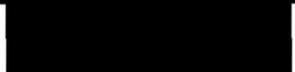
U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEWARK

Date:

JUL 01 2008

MSC-03-245-61249

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 your case 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, Newark, 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, the applicant asserts that the director failed to properly consider all of the evidence submitted by the applicant as required by 8 C.F.R. § 245a.12(f). The applicant provided no new evidence in support of his application.

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 August 30, 2005, the director stated that the applicant failed to submit evidence demonstrating his continuous unlawful residence in the United States during the requisite period. The director granted the applicant thirty (30) days to submit additional evidence. The record reflects that the applicant submitted no further evidence in support of his claim. In the Notice of Decision, dated January 17, 2006, 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 continuously resided in the United States in an unlawful status during the requisite period. The applicant submitted affidavits from friends, a personal statement, a statement from his U.S. citizen wife, and other documents as evidence to support his Form I-485 application. None of the evidence establishes that the applicant entered the United States prior to January, 1982, and resided in an unlawful status for the requisite period of time. Thus, the applicant has failed to meet this burden.

The AAO notes that the record before us contains an Application for Status as a Temporary Resident (Form I-687) signed by the applicant on February 2, 1990. The applicant states therein that he resided at [REDACTED] Bronx, NY., from September, 1981 to November, 1987, and that he was employed as a store clerk at Rio LaPlata Supermarket, 3464 Broadway, from October, 1981 to August, 1983. **This application is supported by a sworn affidavit submitted by [REDACTED], signed on December 14, 1989. Mr. [REDACTED] states that he has personal knowledge that the applicant resided at the [REDACTED] address from October, 1981 to November, 1987, and that he has maintained a friendship with him dating from that time. The affidavit does not elaborate on how the affiant knows that the applicant resided at that particular address at that point in time, under what circumstances he met the applicant, how he dates his acquaintance with the applicant, or how frequently he had contact with him. Thus, this affidavit is of minimal probative value in establishing how and when the applicant entered the United States.**

The applicant also submitted an undated statement from [REDACTED]. Ms. [REDACTED] attests that the applicant resided with her at the [REDACTED] address from October, 1981 until 1989. This statement does not explain her relationship to the applicant, how she met him, how she dated her acquaintance with him, or any other factual circumstances regarding the living arrangements which would lend credibility to her statements. Likewise, this statement is of minimal probative value.

The record also contains an undated statement from [REDACTED], printed on letterhead stationery titled, "Belway Sports and Entertainment." Mr. [REDACTED] explains in this document that he met the applicant in 1982 at a family New Year's Eve party. Mr. [REDACTED] states that he successfully recruited the applicant to play on a basketball team from 1982 to 1993. The declarant failed to indicate how he dates his acquaintance with the applicant, or the frequency of his contact with the applicant. Consequently, this statement is of limited probative value.

Additionally, the evidence of record includes a photocopy of a home loan statement dated February, 2005, a Social Security Earnings Statement commencing in 1990, and pay stubs dated in 2005. None of these documents establish that the applicant resided in the United States for the requisite period of time. Thus, they are of no probative value. The letter submitted by the applicant's wife only establishes that they met in Belize in 1987 while the applicant was allegedly visiting his parents, and therefore is not relevant to the issue of entry. Finally, the applicant submitted a series of Queens College Athletic and Recreation identity passes from 1982 to 1993. The passes for years 1988 to 1993 are stamped with a number on the back. However, the passes from 1982 to 1987 do not have an identifying number on the back. Thus, it appears that the earlier passes are not valid.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. 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.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 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.

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.