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U.S. Citizenship
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FILE:

MSC 02 243 63030

Office: CHICAGO

Date:

JUL 11 2008

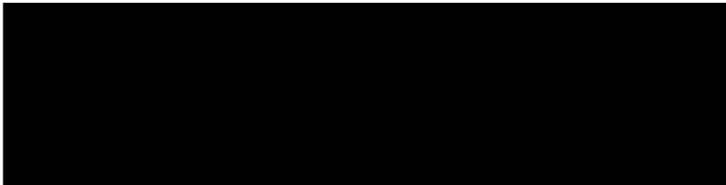
IN RE: Applicant:



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. 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status for the requisite statutory time period.

On appeal, counsel contends that the director failed to explain why the documentary evidence submitted by the applicant was insufficient. Counsel asserts that the applicant has submitted extensive evidence demonstrating his physical presence in the United States from 1982 through 1988 and given that there is no evidence to the contrary, the only reasonable conclusion is that the applicant has established by a preponderance of evidence that he was present in the United States for the requisite time period.

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).

In the Notice of Intent to Deny (NOID), dated March 15, 2005, the director listed the following documentary evidence that had been submitted to establish the applicant's presence in the United States for the prescribed period:

- A letter dated July 1, 2003 signed by [REDACTED] who declared that he had hired the applicant to paint his house in West Palm Beach, Florida in the summer of 1982.
- An envelope addressed to the applicant at [REDACTED], Miami, Florida bearing a postmark of February 21, 1983 from an individual in Pakistan.¹
- A receipt dated November 14, 1984 for VCR repairs for [REDACTED] signed by [REDACTED] for Sana Electronics in Chicago.
- A letter dated July 2, 2003 signed by [REDACTED] who declared that he first saw the applicant in the United States in Florida in 1985 and that for the first half of 1985 saw the applicant at least once per week at the Friday Jumma prayers at the mosque where both he and the applicant worshiped.
- A letter dated July 1, 2003 signed by S [REDACTED] who declared that he had known the applicant since 1984 and had shared an apartment with the applicant at [REDACTED] in Mesquite, Texas during the last half of 1985.
- A letter dated April 14, 2003 signed by [REDACTED] who declared that the applicant had been under her care since August 1986. Dr. [REDACTED] attached a photocopy of a patient ledger showing that the applicant's first office visit occurred on August 10, 1986 and that the applicant lived in Chicago, Illinois.
- A letter dated April 10, 2003 signed by [REDACTED] on the letterhead of a 7-Eleven in South Bend, Indiana, wherein [REDACTED] stated that the applicant had temporarily worked at his 7-Eleven store in June and July 1988.

The director observed that he had taken this information into consideration but found that the evidence did not establish by a preponderance of the evidence that the applicant met the criteria to adjust status under the LIFE Act. The director granted the applicant thirty (30) days to submit additional evidence. The record contains documents that appear to have been submitted in response to the director's NOID including:

- A second letter from [REDACTED] dated April 15, 2005 who again declared that the first time he saw the applicant in the United States was in 1985 in West Palm Beach,

¹ The record contains photocopies of other envelopes addressed to the applicant; one of them reflects a postmark of January 10, 1989; the postmarks of the remaining envelopes are not discernable, and thus do not assist in establishing the applicant's residence in the United States during the requisite time period.

Florida and that for the first half of 1985 he had seen the applicant once per week at the Friday Jumma prayers at the mosque where both he and the applicant worshipped in West Palm Beach, Florida.

- A second letter dated April 15, 2005 signed by [REDACTED], who declared that the applicant had been in the United States since August 1986 because that is when her office records showed that the applicant first came to her office in Chicago, Illinois. Dr. [REDACTED] attached a copy of the patient ledger showing the dates of the applicant's office visits.

In a decision dated February 1, 2006 the director denied the application, determining that a review of the applicant's file including the evidence submitted in support of the Form I-485 application was insufficient to substantiate the applicant's claim that he was in the United States for the requisite time periods.

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 beginning prior to January 1, 1982, through May 4, 1988.

Upon review of the file, the AAO observes that the applicant also submitted a Form I-687, Application for Status as A Temporary Resident Under Section 245A of the INA on January 4, 2006. On the Form I-687, the applicant lists his addresses for the pertinent time period as: [REDACTED] in Miami, Florida from May 1981 to July 1985 and [REDACTED], Hialeah, Florida from August 1985 to October 1989. The applicant listed his employment during the pertinent time period as: self-employed window washer from May 1981 to May 1984 in Miami, Florida; self-employed car washer from June 1984 to November 1985 in Miami, Florida; and self-employed flower salesman from December 1985 to October 1990 in Miami, Florida.

The record also contains an affidavit dated June 3, 1991 signed by [REDACTED] who declared that the applicant had lived with him from August 1985 to August 1990 at [REDACTED] 8, in Chicago, Illinois. The record further contains an affidavit dated April 4, 2003 signed by [REDACTED] wherein the affiant, a resident of Chicago, Illinois, declares that he has known the applicant since 1981 and will attest to the fact that the applicant has been in the United States since 1981.

The AAO has reviewed each document submitted to determine whether the applicant has submitted credible, consistent evidence that would establish by a preponderance of the evidence that the applicant has continuously resided in the United States for the requisite time period. The applicant has not submitted evidence to establish that he entered the United States prior to January 1, 1982. The AAO has reviewed the April 4, 2003 affidavit signed by [REDACTED] a resident of Chicago, Illinois at the time the affidavit was signed, that indicates the affiant has known the applicant since 1981. The affiant does not describe the events and circumstances regarding how or where the affiant met the applicant and does not describe any subsequent interactions with the applicant. The affidavit does not provide details regarding the applicant's location in the United States for the requisite time period. This affidavit is not probative as it does not provide sufficient information to establish that the applicant entered the United States prior to January 1, 1982 and continuously lived in the United States for the requisite time period.

The AAO has reviewed the July 1, 2003 letter signed by [REDACTED] who indicates he hired the applicant to paint his house in West Palm Beach, Florida in the summer of 1982. 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 letter signed by [REDACTED] does not provide this information. In addition, the letter does not establish the applicant's entry into the United States prior to January 1, 1982 and continuous residence in the United States. For these reasons, this letter is not probative.

The AAO has reviewed the envelope addressed to the applicant at [REDACTED] Miami, Florida bearing a postmark of February 21, 1983 and the copy of an envelope with a postmark of January 10, 1984. In light of the discrepancies in the record as addressed below, two letters addressed to the applicant have minimal probative value.

The AAO has reviewed the receipt dated November 14, 1984 for VCR repairs from a shop located in Chicago, Illinois. As the applicant stated on his Form I-687 that he lived in Florida in 1984, the authenticity of this receipt is questionable. Moreover, a copy of a receipt is an indication of one transaction occurring on a particular day. It is insufficient to establish the applicant's entry into the United States prior to January 1, 1982 and continuous residence in the United States for the requisite time period.

The AAO has reviewed the letters dated July 2, 2003 and April 15, 2005 signed by [REDACTED]. These letters indicate that the applicant was in Florida in the first half of 1985 and attended prayers in West Palm Beach, Florida where both the letter-writer and the applicant worshipped. The letter, however, does not provide the required detailed information describing how the letter-writer and the applicant initially met in the United States or the subsequent interactions with the applicant, other than for an approximate six-month period in 1985. In addition, the applicant does not indicate that he belonged to any religious organizations on either the Form I-485 or Form I-687. The letters do not cover the requisite time period prior to the first half of 1985. The letters signed by [REDACTED] are insufficient to establish the applicant's continuous residence in the United States for the requisite time period.

The AAO has reviewed the July 1, 2003 letter signed by [REDACTED] who indicates that he has known the applicant since 1984 and shared an apartment with the applicant in Mesquite, Texas during the last half of the year 1985. This letter conflicts with the applicant's statement that he lived in Florida from 1981 to 1989 as indicated on the Form I-687. This letter also conflicts with a June 3, 1991 affidavit signed by [REDACTED] who declared that the applicant lived with him from August 1985 to 1990 in Chicago, Illinois. The AAO finds both the July 1, 2003 letter signed by [REDACTED] and the June 3, 1991 affidavit signed by [REDACTED] contradictory and thus not probative in this matter.

The AAO has reviewed the letters signed by [REDACTED] and acknowledges that the applicant may have visited the doctor's office on August 10, 1986, September 23, 1986, February 27, 1987, March 16, 1989, and an illegible date in 1990. However, these office visits took place in Chicago, Illinois, thus conflict with

the applicant's statement that he lived in Florida from 1981 to 1990 as indicated on the Form I-687. In addition, these office visits do not establish continuous residence in the United States for the requisite period. Further, the record does not contain contemporaneous evidence that I [REDACTED] treated the applicant prior to August 10, 1986. Thus, the letters do not establish that the applicant entered the United States prior to January 1, 1982 and continuously resided in the United States for the requisite time period.

The AAO has also reviewed the April 10, 2003 letter signed by [REDACTED] indicating the applicant temporarily worked at a 7-Eleven store in South Bend, Indiana in June and July 1988. Although the dates of "employment" are outside of the pertinent time period, the AAO observes that the information in the letter conflicts with the applicant's statement on the Form I-687 that he worked as a flower salesman in Miami, Florida from December 1985 to October 1990.

Although the applicant has submitted several affidavits and letters in support of his application, the applicant has not provided contemporaneous, credible evidence of his physical presence in the United States for the requisite time period. As noted above, the applicant has submitted letters and affidavits that conflict with his statements made on the Form I-687 as well as conflicting with each other. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). 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 as well as the contradictory information contained in the record regarding the applicant's claimed residences 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 for the duration of the requisite time period, 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.