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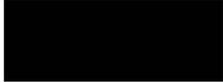
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FILE:



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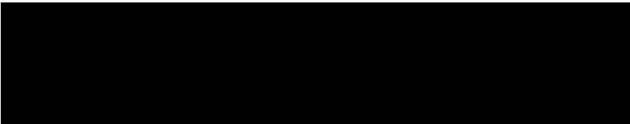
IN RE: Applicant:



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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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 (director) in Chicago, Illinois. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

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

On appeal counsel asserts that the director did not properly consider the evidence in the record and reiterates the applicant's claim to have resided in the United States continuously in an unlawful status since 1981.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. See section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

“Continuous unlawful residence” is defined at 8 C.F.R. § 245a.15(c)(1), as follows: “An alien shall be regarded as having resided continuously in the United States if *no single absence* from the United States has *exceeded forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed.” (Emphases added.)

“Continuous physical presence” is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: “An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of *brief, casual, and innocent absences* from the United States.” (Emphasis added.) The regulation further explains that “[b]rief, casual, and innocent absence(s) as used in this paragraph means *temporary, occasional trips abroad* as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.” (Emphasis added.) 8 C.F.R. § 245a.16(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 its amenability to verification. See 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).

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 applicant, a native of Mexico who claims to have lived in the United States since March 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on May 13, 2002. As evidence of his residence in the United States during the 1980s the applicant submitted a series of letters and affidavits which had originally been filed in 1995. They included the following:

- A letter from [REDACTED], a resident of La Habra, California, dated October 16, 1995, stating that the applicant worked for him as a gardener from June 1981 to April 1990, at his property located at [REDACTED] Whittier, California.
- Copies of medical receipts from [REDACTED] M.D. dated January 2, 1986, January 7, 1986 and January 28, 1986, identifying the applicant as the patient.
- An affidavit from [REDACTED], a resident of Pico Rivera, California, dated October 12, 1995, stating that he met the applicant through a friend and knows that the applicant resided at [REDACTED], Pico Rivera, California, from March 1981 to January 1990.

- An affidavit from [REDACTED], a resident of La Palma, California, dated October 12, 1995, stating that he has known the applicant since 1981, and knows that the applicant resided at [REDACTED], Pico Rivera, California, and [REDACTED] & [REDACTED], Los Angeles, California, from March 1981 to March 1992.

An affidavit from [REDACTED] a resident of Norwalk, California, dated October 16, 1995, stating that he has known the applicant since 1981, and knows that the applicant resided at [REDACTED], Pico Rivera, California, from March 1981 to January 1990

Letters written in Spanish with no accompanying English translation from [REDACTED] and [REDACTED], in Los Angeles, California, dated January 1, 1982 and April 23, 1984, respectively. No addressee is identified in either letter

On May 23, 2005, the director issued a Notice of Intent to Deny (NOID), indicating that the evidence submitted was not sufficient to establish by a preponderance of the evidence that the applicant was continuously resident in the United States for the requisite period to adjust status under the LIFE Act. The applicant was granted 30 days to submit additional evidence.

After receiving an extension the applicant submitted additional documentation relating to his wife's employment, which has no probative value in the current proceeding.

On January 17, 2006, the director issued a Notice of Decision denying the application. The director concluded that the evidence of record failed to establish that the applicant resided continuously in the United States in an unlawful status from before January 1, 1982, through May 4, 1988, as required for legalization under the LIFE Act.

On February 16, 2006, the applicant submitted a motion to reopen and reconsider the director's denial, and submitted the following additional documentation as evidence of his residence in the United States during the 1980s.

- A letter of employment from [REDACTED], of Los Angeles, California, dated March 2, 2005, stating that he has known the applicant since 1984 and that the applicant worked for him as a gardener from 1984 to 1992.
- An affidavit from [REDACTED] a resident of Highland Park, California, dated October 7, 2005, stating that she met the applicant and his family in March 1981, when they came to the United States, that they were her neighbor when they resided at [REDACTED], Los Angeles, California (beginning in January 1994), and that they used to see each other every day. Ms. [REDACTED] claims that she still keeps in touch with the applicant and his family since their move to Illinois.

- An affidavit from [REDACTED], a resident of Los Angeles, California, dated October 13, 2005, stating that he met the applicant and his family in 1981, when they came to the United States, that they met each other in the park where they used to go and watch football games, and that they still keep in touch since the applicant and his family moved to Illinois.

On April 10, 2006, the director issued a Decision to Deny Motion to Reopen. The director found that the additional documentation failed to establish that the applicant entered the United States before January 1, 1982 and thereafter resided continuously in the United States in an unlawful status through May 4, 1988, as required for legalization under the LIFE Act. On May 9, 2006, the applicant appealed the director's denial of his motion. On February 2, 2007, the director, finding no basis to reopen or reverse the earlier decision, forwarded the appeal to the AAO for further review.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that he has not.

The employment letters from [REDACTED], dated October 16, 1995, and from [REDACTED], dated March 2, 2005, do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because they did not provide the applicant's address at the time of employment, did not declare whether the information was taken from company records, and did not indicate whether such records are available for review. The letters were not supplemented by any earning statements, pay stubs, or tax records demonstrating that the applicant actually had those gardening jobs during any of the years claimed. Additionally, the letters were not accompanied by any documentation from [REDACTED] or [REDACTED] of their own identity and presence in the United States during the 1980s. Finally, the letter from [REDACTED] does not claim that he knew the applicant before 1984 and does not identify the address where the applicant worked. For the reasons discussed above, the AAO determines that the employment letters have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States during the years 1981 through 1988.

The medical receipts from [REDACTED], M.D. are dated January 2, 1986, January 7, 1986 and January 28, 1986, in handwritten notations, but have no stamps or other official markings to

authenticate those dates. Nor do the receipts identify the applicant's address. Even if the AAO accepted the receipts as credible evidence of the applicant's residence in the United States in 1986, they would not establish the applicant's continuous residence in the United States before 1986, much less before January 1, 1982, as required for legalization under the LIFE Act.

The letters from the [REDACTED] and [REDACTED], dated in 1982 and 1984, were written in Spanish with no certified English translation and no identifiable addressees. These documents are of no probative value as to the applicant's residence in the United States and will not be accorded any weight in this proceeding.

The affidavits by [REDACTED], and [REDACTED] dating from 1995, and by [REDACTED] and [REDACTED] dating from 2005, all have minimalist or fill-in-the-blank formats with little personal input by the affiants. While they all claim to have known the applicant since 1981, the affiants provide almost no information about his life in the United States, where he worked during the 1980s, and their interaction with him over the years. Nor are the affidavits accompanied by any documentary evidence from the affiants – such as photographs, letters, and the like – of their personal relationship with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A). Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

The appeal will be dismissed, and the application denied.

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