

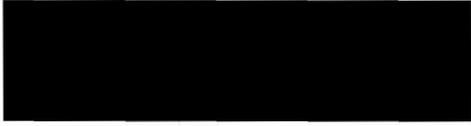
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FILE:



Office: CHICAGO

Date: **JUL 29 2008**

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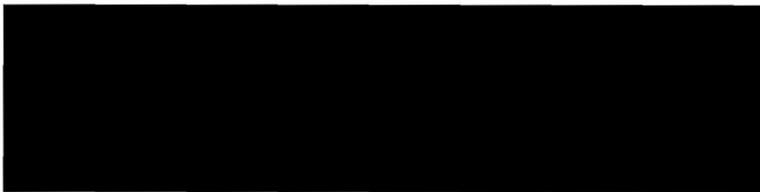
IN RE: Applicant:



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.

A handwritten signature in black ink, appearing to read "R. 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 (director) in Chicago. 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 country in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal counsel asserts that the denial of the application was contrary to the law and regulations in that the director did not properly consider the quality of the evidence in the record. Counsel contends that the evidence previously submitted, together with some additional documentation submitted on appeal, is sufficient to establish that the applicant has resided in the United States continuously in an unlawful status since before January 1, 1982.

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 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 applicant, a native of Mexico who claims to have lived in the United States since July 1978, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on August 8, 2001. In a Notice of Intent to Deny (NOID), dated May 23, 2005, the director, after listing pertinent documentation in the record, indicated that the applicant had not provided sufficient credible evidence to establish that he resided continuously in the United States from before January 1, 1982, through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

In response, the applicant submitted additional documentation, including a police report from the Chicago Police Department, dated September 2, 2003, indicating that the applicant was arrested

on November 30, 1985, March 3, 1986, and July 1, 1987; an official driving record from the State of Illinois, dated August 13, 2003, indicating that the applicant has various traffic citations from 1983, 1987, 1993, and 2002; and a Certificate of Dissolution of Marriage issued in Cook County, Illinois, indicating that the applicant was married on February 14, 1983, in Dixon, Illinois.

On August 16, 2006, the director denied the application. While acknowledging that the evidence submitted established the applicant's residence during part of the statutory period, specifically, from 1985 through 1988, he found the evidence insufficient to establish that the applicant continuously resided in the United States for the entire year in 1983 and 1984, or any part of 1982.

On appeal, counsel asserts that the director failed to give proper weight to the evidence submitted by the applicant. Counsel submits additional documentation in the form of affidavits and a copy of his marriage certificate to show that the applicant resided in the United States from before January 1, 1982 through May 4, 1988.

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 AAO agrees with the director's finding that the applicant has established continuous residence in the United States from 1985 through 1988 and will focus in the appeal on evidence submitted by the applicant relating to the years 1981-1984, which includes the following:

- A letter of employment from [REDACTED] Plant Supervisor of Swaby Manufacturing, dated March 23, 1987, stating that the applicant worked for the company from October 14, 1980 to November 20, 1981, was temporarily laid off, and was rehired by the company from March 30, 1982 until August 2, 1982.
- An affidavit from [REDACTED] president of P & H Plating Company, Inc., in Chicago, Illinois, dated June 10, 1993, stating that the applicant worked at the company as a "plater" from May 24, 1983 to June 30, 1984, under the name of Social Security [REDACTED]
- A photocopied application for driver's license signed by the applicant and dated October 21, 1982, with an indicated expiration date of October 21, 1985.

A Certification of Marriage from Lee County Illinois, indicating that the applicant and [REDACTED] were married in Dixon, Illinois, on February 14, 1983.

- A Certificate of Dissolution of Marriage indicating that the applicant married on February 14, 1983 in Dixon, Illinois.

A police clearance from the City of Chicago Police Department, dated August 15, 2003, indicating that the applicant had no conviction or prison sentence for any criminal offense from 1980 to the present.

A Form I-213, Record of Deportable Alien, indicating that the applicant was arrested at the United States border in El Paso, Texas, on April 16, 1983, while attempting to enter the United States from Mexico.

An affidavit from [REDACTED], a resident of Huntington Park, California, dated September 12, 2006, stating that the applicant is his son, that the applicant entered the United States in 1978, and that the applicant came to live with him at his house after he arrived in 1978.

- An affidavit from [REDACTED] a resident of Huntington Park, California, dated September 12, 2006, stating that the applicant is her brother and that she knew the applicant entered the United States in 1978 because the applicant told her in Mexico when he entered the United States.

An affidavit from [REDACTED] a resident of Chicago, Illinois, dated September 19, 2006, stating that he first met the applicant on June 21, 1979, at a friend's house and that he knew the applicant entered the United States in 1978 because he met the applicant one year after the applicant entered the United States.

An affidavit from [REDACTED] a resident of Cicero, Illinois, dated September 16, 2006, stating that the applicant is his brother and that he knew the applicant entered the United States in 1978 because he was in Mexico when the applicant entered the United States.

- An affidavit from [REDACTED] a resident of Chicago, Illinois, dated September 2, 2006, stating that the applicant is his brother and that he knew the applicant entered the United States in 1978 because he was living in Chicago with their father when the applicant came to Los Angeles, and after three months the applicant moved to Chicago to live with them.

The affidavits from [REDACTED] all have minimalist or fill-in-the-blank formats with little personal input by the affiants. While they all claim to have known that the applicant entered the United States in 1978, the affiants provide almost no information about his life in the United States 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.

The letter of March 23, 1987 from [REDACTED] of Swaby Manufacturing, failed to meet the regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), because the letter did not provide the applicant's address during the period(s) of employment, did not describe the applicant's position or duties with the company, did not indicate whether or not the information was taken from official company records, where the records are located and whether CIS may have access to the records. In addition, the letter from [REDACTED] did not appear on the company letterhead and was not supplemented by any earning statements or tax records demonstrating that the applicant was actually employed by the company during the years indicated.

The affidavit from [REDACTED] of P & H Plating Company, Inc., dated June 10, 1993, also did not provide the applicant's address at the time of employment. Nor was it supplemented by any earning statements, pay stubs, or tax records demonstrating that the applicant was actually employed by the company during the period stated. Additionally, neither P & H Plating nor the applicant provided any documentation to establish that the applicant worked for the company under the assumed name of [REDACTED] during the years indicated.

For the reasons discussed above, the AAO determines that the employment letters have limited probative value. They are not persuasive evidence of the applicant's continuous residence in the United States during the years 1981 to 1984.

The police clearance from the City of Chicago Police Department has little probative value as evidence of the applicant's residence in the United States in the 1980s because it did not investigate whether the applicant lived in Chicago since 1980, but only whether he was convicted of any crime(s) since that year.

As for the applicant's official driving record indicating that he was arrested on September 17, 1983, for driving under the influence of alcohol, and the Marriage Certificate indicating that the applicant was married in Dixon, Illinois on [REDACTED] even if the AAO accepted these official records as credible evidence of the applicant's residence in the United States during 1983, they would not be sufficient to establish the applicant's residence in the United States during 1982, much less before January 1, 1982, as required for legalization under the LIFE Act.

The application for a driver's license signed by the applicant and bearing the date of October 21, 1982, listed his address as [REDACTED]. According to information on the Form I-687 prepared by the applicant on August 27, 1993, however, the applicant did not reside at this address until January 1985. It is also noted that the date is written in darker ink and appears to overlay the original written entry. These inconsistencies negatively impact on the

credibility and reliability of this document as evidence of the applicant's residence in the United States in 1982.

The record also includes a Form I-213, Record of Deportable Alien, indicating that the applicant was arrested at the United States border in El Paso, Texas, on April 16, 1983, while attempting to enter the United States. This arrest is inconsistent with information on the applicant's Form I-687, which lists four absences from the United States - in March 1981, in March 1984, in December 1987 and in March 1990 - each time for one month. There was no mention on the Form I-687 of an absence from the United States in 1983, or how long that absence lasted.

The inconsistencies noted above undermine the applicant's credibility. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice without competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

Based on the foregoing analysis of the evidence, the AAO determines that the applicant has failed to establish his continuous residence in the United States before 1983. 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.