



U.S. Citizenship
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Services

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FILE:

MSC 01 338 60954

Office: NEW YORK

Date: JUN 03 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:

SELF-REPRESENTED

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 District Director, New York, New York, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter 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 establish residence in the United States during the statutory period.

On appeal, the applicant asserts that the interviewing officer misunderstood him, possibly due to language problems. He asserts that the affidavits he submitted were credible and submits updated affidavits from individuals who previously provided affidavits.

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 record reflects that on September 3, 2001, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On April 29, 2004, the applicant appeared for an interview based on his application.

On July 3, 2006, the director issued a Notice of Intent to Deny (NOID), finding that the applicant failed to establish residence in the United States during the statutory period. The director stated that that, during the interview, the applicant testified that he entered the United States on June 11, 1981, without inspection, through Plattsburgh, but did not submit evidence of such entry. The director informed the applicant that he had 30 days from the receipt of the NOID to submit evidence to overcome the director's intent to deny his application. The applicant did not respond to the NOID.

On November 9, 2007, the director denied the application, finding that the applicant failed to overcome the grounds for denial as stated in the NOID.

On appeal, the applicant asserts that he did not testify that he entered the United States through Plattsburgh, New York. He asserts that he was not provided a Haitian Creole interpreter for his interview and that the interviewing officer misunderstood him. He submits updated affidavits from individuals who previously submitted affidavits on his behalf.

The issue in this proceeding is whether the applicant has provided sufficient credible evidence to demonstrate that he was continuously physically present in the United States during the requisite period.

The record of proceeding consists of affidavits previously submitted with the applicant's Form I-687, Application for Status as a Temporary Resident and updated versions of those affidavits submitted on appeal. The following evidence relates to the requisite period:

Letters and Affidavits

- A fill-in-the-blank affidavit from [REDACTED]. Ms. [REDACTED] stated that she had personal knowledge that the applicant lived at three different addresses in Brooklyn, New York, from August 1981, to the date the affidavit was notarized on June 14, 1993;

- A fill-in-the-blank affidavit from [REDACTED]. Ms. [REDACTED] stated that she had personal knowledge that the applicant lived at three different addresses in Brooklyn, New York, from August 1981, to the date the affidavit was notarized on June 13, 1993;
- A fill-in-the-blank affidavit from [REDACTED]. Mr. [REDACTED] stated that the applicant lived with him from August 1981 to April 1986;
- An updated letter notarized on December 10, 2007, from [REDACTED], the applicant's second cousin, attesting that the applicant resided with him at [REDACTED] in Brooklyn, New York, from August 1981 to April 1986. [REDACTED] attests that all the bills were in his name and that the applicant paid him about \$200 per month towards rent and household bills;
- A fill-in-the-blank affidavit dated October 13, 1993, from [REDACTED]. Ms. [REDACTED] stated that the applicant lived with her from May 1986 to September 1989; and,
- An undated letter from [REDACTED], stating that the applicant lived with her and her husband at [REDACTED], in Brooklyn, New York from May 1986 to September 1989. Mrs. [REDACTED] states that the applicant contributed towards the rent and household bills.

These letters can be given little evidentiary weight because they lack sufficient detail.

Although the applicant has submitted numerous letters and affidavits in support of his application, he has not provided any 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. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period. None of the affiants indicated how they dated their acquaintance with the applicant, how they met the applicant, or, how frequently they saw the applicant.

Church Letter

A letter, dated December 8, 2007, from [REDACTED], Secretary of the French Speaking Seventh Day Adventist Church in Brooklyn, New York, stating that that the applicant had been a member of the church since 1985.

This letter can be given little evidentiary weight and has little probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the letter does not explain the origin of the information given, [REDACTED] listed the applicant's address at the time the letter was written, nor does it provide the address where the applicant

resided during the period of his involvement with the church. Furthermore, the letter does not state the frequency with which the applicant attended the church.

The record of proceedings contains various other documents, including a fill-in-the-blank affidavit from [REDACTED] stating that the applicant lived with her from October 1989 through the date the letter was written on June 12, 1993; a notarized letter from [REDACTED], attesting that she gave the applicant a ride to Canada in 1987; a Haitian passport, issued to the applicant in 1993 by the Haitian consulate in New York; and, a letter from Prepared Meat Sales, stating that the applicant worked there from May 20, 1990, through at least June 11, 1993. None of this evidence addresses the applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have last entered the United States on August 25, 1987, and to have resided for the duration of the requisite period in New York. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has failed to do so.

Given the applicant's reliance upon documents with minimal probative value, the applicant has failed to establish continuous residence in an unlawful status in the United States for the requisite period, as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*.

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.