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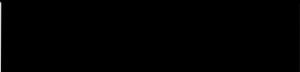
U.S. Citizenship
and Immigration
Services

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FILE:



MSC 03 247 62401

Office: DALLAS

Date: JUN 30 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 "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, Dallas, Texas, 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, counsel asserts that the director erred in not giving more weight to the evidence presented by the applicant. Counsel further asserts that the applicant submitted sufficient credible evidence to establish eligibility.

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 May 13, 2006, the director stated that the applicant failed to establish that he entered the United States before January 1, 1982, and his continuous unlawful residence in the United States through May 4, 1988. The director noted that in a sworn statement to an Immigration Inspector made by the applicant on February 25, 1990, the applicant stated that he had entered the United States for the first time in 1984. The director granted the applicant thirty (30) days to submit additional evidence.

In response to the NOID counsel for the applicant states that the applicant has presented sufficient proof that he has been in the United States before January 1, 1982 through 1988. Counsel references submissions by the applicant that includes a school identification card for the 1982 – 1983 school year, and mail envelopes addressed to the applicant in the United States. With his response counsel submits a copy of a mail envelope postmarked November 15, 1982, and addressed to [REDACTED], and an affidavit from the applicant, dated May 20, 2006, denying that he ever told an Immigration Officer that he had first entered the United States in 1984, and denying that he was ever interviewed by an Immigration Inspector in February 1990.

In the Notice of Decision, dated July 29, 2006, the director denied the instant application based on the reasons stated in the NOID. The director noted that the record reflects that the applicant attempted entry into the United States on February 25, 1990, made a false claim to U.S. citizenship, and made a statement stating that he had first entered the United States in 1984.

On appeal, counsel for the applicant states that the applicant has met his burden of proof as he has submitted sufficient evidence to establish eligibility. Counsel references evidence previously submitted, noting that the applicant has submitted copies of numerous envelopes addressed to him and a photocopy of a school identification card for the school year 1982 – 1983.

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 letters, affidavits, and other evidence, including mail envelopes and a photo identification, as evidence to support his Form I-485 application. Here, the submitted evidence is not relevant, probative, and credible.

In an attempt to establish continuous unlawful residence in the United States during the requisite period since prior to January 1, 1982, the applicant provided:

1. A letter from [REDACTED] Associate Pastor of the Catholic Community of Saint Finbar, dated May 10, 2004. [REDACTED] states that the applicant lived in Burbank, California, from January 1980 until December 1984;

2. An affidavit from [REDACTED] dated October 26, 1991, stating that the applicant, his nephew, lived with him at [REDACTED] Burbank, California 91502, from January 1980 until December 1984;
3. Photocopies of 30 mail envelopes addressed to the applicant in the United States;
4. A school photo identification card for 1982 – 1983 from the McKinley Elementary School, showing the applicant's address as [REDACTED], Burbank, California 91506; and,
5. A letter, dated May 13, 2004, from [REDACTED] Director, Pupil Services, Burbank United School District, Burbank, California, stating that a search of the McKinley Elementary School was conducted, and they were unable to locate school records for the term 1982-1983 for the applicant.

Contrary to counsel's assertion, after a thorough examination of the record, there is a lack of credible evidence to support the applicant's claim.

Although the applicant has submitted these documents in support of his application, the applicant has not provided any contemporaneous evidence of residence in the United States during the duration of the requisite period. In addition, some of the documentation is questionable. 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. The letter from [REDACTED] states that the applicant lived in Burbank, California, from January 1980 until December 1984. However, Rev. [REDACTED] did not indicate how he dated his acquaintance with the applicant, or how frequently he saw the applicant. [REDACTED]z attests that the applicant lived with him from January 1980 until December 1984, and he provided for the applicant and was responsible for his care. Although the applicant was between 9 and 13 years old at the time, there is no reliable documentation, such as school records, or immunization records to corroborate the claim. In that the applicant was about 9 years old when [REDACTED] claims the applicant lived with him, the applicant would have attended elementary school during that period, and there should be ample evidence of the applicant's attendance at school, such as the applicant's grade reports. However, no such evidence is provided. It is noted that the letter from [REDACTED] Director, Pupil Services, Burbank United School District, confirms that a search of the McKinley Elementary School records was conducted, and they were unable to locate school records for the term 1982-1983 for the applicant. This calls into question the authenticity of the photo identification for the school year 1982 – 1983 submitted by the applicant as evidence of his school attendance and whether the applicant ever attended the McKinley Elementary School as he claims. If the applicant had attended the McKinley Elementary School records would be available. Also, if the applicant had resided in the United States during 1980 to 1984 as he claims he would have been required to attend elementary school. However, no evidence points to his attendance. The complete lack of corroborative evidence casts considerable doubts on whether the applicant resided in the United States since January 1980 as the applicant claims. Doubt

cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status during the requisite period.

It is noted that the record of proceedings reflects that the applicant attempted entry into the United States on February 25, 1990, at Brownsville, Texas, made a false claim to U.S. citizenship, and was apprehended, charged and placed in proceedings. In a sworn statement, signed by the applicant on February 25, 1990, the applicant stated that he had been living in the United States since 1984. Despite the evidence of record, the applicant now attempts to disavow his sworn statement. Given the lack of evidence coupled with the applicant's sworn statement that he had first entered the United States in 1984, the applicant has failed to establish his continuous unlawful residence 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.