

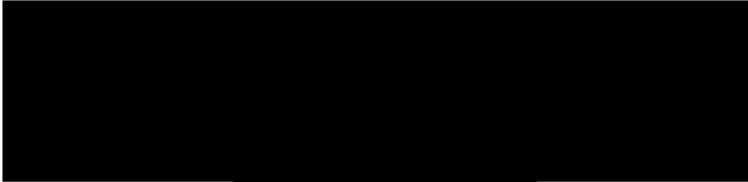
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 02 150 60131

Office: CHICAGO

Date:

MAR 03 2006

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.

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 asserts that the director failed to adequately consider all of the evidence submitted by the applicant as required by 8 C.F.R. § 245a.12(f). Counsel provided copies of previously submitted evidence for consideration.

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 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.

In the Notice of Intent to Deny (NOID), dated on or about August 9, 2004, the director stated that the applicant failed to submit evidence demonstrating his continuous unlawful residence in the United States from prior to January 1, 1982, through May 4, 1988. The director noted that the applicant had submitted phone bills in the name of [REDACTED] for year 1980; pay stubs issued to [REDACTED] for the years 1979 to 1982; and a car title issued to [REDACTED] dated June 30, 1982. The director noted that the applicant **claimed he had used the alias, [REDACTED]**. The director indicated that Citizenship and Immigration Service (CIS) had considered the affidavits and other evidence submitted but that the applicant had not submitted primary or secondary evidence to establish his claim. The director granted the applicant thirty (30) days to submit additional evidence. The record reflects that no additional evidence was received. In the Notice of Decision, dated February 25, 2005, the director denied the instant applicant based on the reasons stated in the NOID.

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 prior to January 1, 1982, through May 4, 1988. The applicant has not met his burden of proof.

Employment Letters

The applicant submitted an April 29, 1992, letter from [REDACTED] owner of [REDACTED] Mr. [REDACTED] stated that the applicant has been employed in the position of mechanic's helper from October 1981 to July 1983. [REDACTED] failed to provide the applicant's address at the time of employment, show periods of layoff, 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 as required under 8 C.F.R. § 245a.2(d)(3)(i). In addition, the letter of employment provides the typewritten name [REDACTED] and address at the top of a plain sheet of paper and an unidentified photograph with a stamp labeled [REDACTED] Auto Repair¹ and different address attached to the paper.

The applicant submitted an April 5, 1992 sworn statement from [REDACTED], owner of [REDACTED] Carpet Cleaning. [REDACTED] stated that the applicant had been employed at his business from August 1983 to March 1987. [REDACTED] failed to provide the applicant's address at the time of employment, show periods of layoff,

[REDACTED] indicates that [REDACTED] s Auto Repair closed and that he had opened [REDACTED] s Auto Repair at a new location.

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 as required under 8 C.F.R. § 245a.2(d)(3)(i).

Neither of the affiants provided the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the claimed employers also failed to 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's inability to obtain letters of employment that comply with the requirements at 8 C.F.R. § 245a.2(d)(3)(i) seriously detracts from the credibility of his claim of continuous unlawful residence during the requisite period.

The applicant also submitted a sworn affidavit from [REDACTED], owner of [REDACTED] Electrical Services, dated June 27, 1992 on an employer affidavit form. [REDACTED] swore that he had employed the applicant as a general helper at his business from April 1987 to August 1989. [REDACTED] failed to provide the applicant's address at the time of employment, indicated there were no periods of layoff, and declared that no official records of employment were maintained. The lack of contemporaneous evidence substantiating the affiant's declaration of employment detracts from the validity of the claim.

Affidavits

The applicant submitted a sworn affidavit dated September 5, 1992, by [REDACTED] declaring that he had known the applicant since June 1979. The affiant stated that the individual in the attached photograph, a photograph of the applicant, is/was also known by the name [REDACTED]. The affiant indicated he knew the applicant used the name [REDACTED] when the affiant and the applicant worked together. As noted above, the applicant submitted phone bills in the name of [REDACTED] for year 1980; pay stubs issued to [REDACTED] for the years 1979 to 1982; and a car title [REDACTED] dated June 30, 1982. The regulation at 8 C.F.R. § 245a.2(d)(2)(ii) indicates that the most persuasive evidence of proof of common identify is a document issued in the assumed name that identifies the applicant by photograph, fingerprint, or detailed physical description. The phone bills, pay stubs, and car title do not contain any identifying information other than the assumed name. Thus, these documents provide little probative evidence. Moreover, the affiant, [REDACTED], does not provide any detailed information regarding the applicant or the circumstances of his use of an assumed name. Further, other than the brief statement that the affiant and the applicant "worked together," the affiant does not provide any detailed information regarding the applicant, discuss the number of years they worked together, or detail the type and circumstances of work.

General Letters

The applicant has provided two letters from two different pastors. Pastor [REDACTED] of the St Pius V Parish notes in a September 12, 2003 letter, that the applicant has been a parishioner at St. Pius V. parish since 1981. Pastor [REDACTED] of the St. Francis of Assisi Church in a December 2, 2001 letter indicates that the applicant has been a parishioner of his church since 1982. These letters do not include

inclusive dates of the applicant's membership in the church, do not include the church seal, and do not establish the origin of the information the pastors' are attesting to as required by the regulation at 8 C.F.R. § 245a.2(d)(3)(v). These letters do not provide sufficient detail regarding the applicant and his continuous physical presence in the United States to establish that the applicant resided in the United States for the requisite time period.

The applicant has also provided a letter July 30, 1992 letter authored by [REDACTED] D.D.S., who informs that she has known [REDACTED] for over seven years as a patient in her practice. [REDACTED] does not attach a picture or otherwise identify the applicant in this matter as [REDACTED]. The record also contains a copy of a second letter authored by [REDACTED] dated August 27, 2003, wherein [REDACTED] indicates that [REDACTED] has been a patient since September 1985. The copy includes a photograph, but the individual in the photograph is indistinguishable. The statements of [REDACTED] are insufficient to substantiate that [REDACTED] is the same person as the applicant. Moreover, the letters do not establish the applicant's residence or continuous physical presence in the United States for the requisite time period.

The record also contains an undated letter from [REDACTED] of M.B. Sales Co. indicating that he has known the applicant, [REDACTED], since March 1982 through a revolving account. Attached to the letter is a photograph of the applicant. The letter does not provide further detail regarding the applicant or the applicant's continuous residence in the United States.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence 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. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. 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, for the requisite time 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 1, 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.