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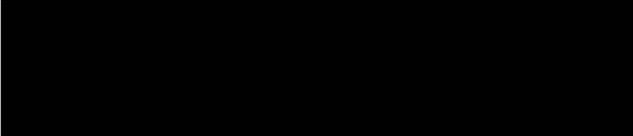
U.S. Department of Homeland Security
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U.S. Citizenship
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FILE:

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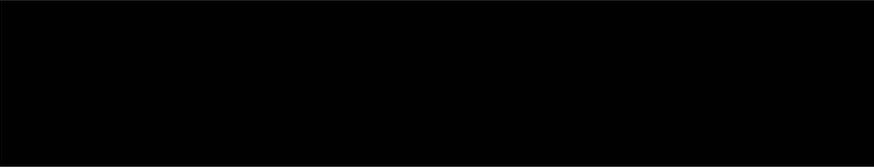
Applicant:



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 office that originally decided your case. If your appeal was sustained, or if your case 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, Chicago, Illinois, 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 that he been illegally and physically present in the United States from January 1, 1982, through May 4, 1998.

On appeal, counsel for the applicant asserts that the director did not adequately consider all of the evidence submitted by the applicant. Counsel did not submit additional 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.

The record reflects that on June 3, 2002, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. In support of the application, the applicant submitted the following documents:

- An employer letter;
- Seven affidavits;
- 1979 and 1980 Internal Revenue Service (IRS) Forms 1040, U.S. Individual Income Tax Return;
- A Cook County Collector Real Estate Tax Bill.

On June 9, 2003, the director sent the applicant a Notice of Intent to Deny (NOID). The director stated that the applicant failed to submit evidence to establish that he had been illegally and physically present in the United States from January 1, 1982, through May 4, 1988. The director informed the applicant that he had 30 days from the receipt of the NOID to submit any information the applicant felt was relevant to his case. In response, the applicant submitted photocopies of six photographs of himself.

On May 16, 2005, the director denied the application, finding that the applicant failed to submit evidence to establish that he had been illegally and physically present in the United States from January 1, 1982, through May 4, 1988. The director erred in stating that the applicant must establish continuous physical presence from before January 1, 1982, through May 4, 1988. A LIFE applicant must establish continuous unlawful residence from before January 1, 1982, through May 4, 1988, and continuous physical presence from November 6, 1986, through May 4, 1988. Nonetheless, this is harmless error. The director noted that the applicant did not provide specific information about when the photographs provided by the applicant were taken. The director also noted that USCIS attempted to contact the affiants, but that all were non-verifiable, because no phone number was provided, a phone number could not be located, or was disconnected.

On appeal, counsel for the applicant asserts that the director did not adequately consider all of the evidence submitted by the applicant. Counsel did not submit additional evidence for consideration.

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 of employment and affidavits as evidence to support his Form I-485 application. Some of the evidence submitted is either undated or indicates that the applicant resided in the United States after his entry on a B-2, non-immigrant visitor for pleasure visa in April 1988 and is not probative of residence before that date. The following evidence relates to the requisite period:

Employment Letters

- The applicant submitted a May 14, 1991 letter from [REDACTED] general manager of [REDACTED]. [REDACTED] stated that the applicant has been employed at [REDACTED] from October 10, 1981, through January 10, 1985. [REDACTED] stated that the applicant was an assistant in the dark room and helped in processing maintenance.
- The applicant also submitted an employment letter from [REDACTED], supervisor at [REDACTED]. [REDACTED] stated that the applicant worked at [REDACTED] as a bartender and janitor, from January 1985, until March 30, 1990, and that he was paid in cash.
- Finally, the applicant submitted an employment letter from [REDACTED] President of the [REDACTED], dated March 13, 2003. [REDACTED] stated that the applicant had been employed since April 1990. [REDACTED] stated that the applicant was a good, loyal, and trustworthy employee, but did not state what the applicant's position was or what salary he was paid.

The employment letters can be given little evidentiary weight. Specifically, the employers failed to provide 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 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. None of the letters listed the applicant's duties with the companies. All of the employment letters lack sufficient detail to be found probative.

Affidavits

- The applicant submitted an affidavit from [REDACTED], the applicant's cousin. Ms. [REDACTED] states her current address and the applicant's current address. She states that

the applicant lived with her from October 1981 to March 1983. She does not, however, state the address where she and the applicant lived together during that time period or provide any details about that time period.

- The applicant submitted an affidavit from [REDACTED] the applicant's former roommate. [REDACTED] states that he has known the applicant since 1983. He states that the applicant lived with him at [REDACTED] Summit, Illinois, 60501. He does not, however, provide the dates that the applicant lived there.
- The applicant submitted an affidavit from [REDACTED] the applicant's hairdresser. [REDACTED] states that the applicant has been a client of her beauty salon since 1981. She lists his current address, and attests to his good moral character.

[REDACTED] proceeding also contains affidavits from [REDACTED] and, [REDACTED]. These affidavits, along with affidavits and employment letters resubmitted with the current application, were submitted with a previous application under the Legalization program.

These affidavits are of little probative value and can be given little evidentiary weight, as they are not sufficiently detailed.

Photographs

The applicant submitted six, undated photographs of himself, as evidence of his continuous residence and physical presence. Counsel for the applicant states that these are the only things he could find to prove his physical presence. Counsel asserts that the photographs were taken during the period of 1982 to 1986 and that, since over 20 years have passed since they were taken, the applicant does not remember the dates on which they were taken. These photographs are of minimal probative value and can be given very little weight. They are not dated. They are of the applicant in unknown locations. Even if they proved the applicant was in the United States during the stated period, they would not establish his continuous residence in the United States at the time.

Although the applicant has submitted numerous 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.

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 in June 1987, near San Isidro,

California, and to have resided for the duration of the requisite period in Illinois. 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.

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. 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 December 31, 197, 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.