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U.S. Citizenship
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FILE:

MSC 02 138 61996

Office: LOS ANGELES

Date:

MAR 27 2008

IN RE:

Applicant:



APPLICATION:

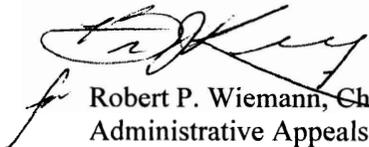
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:

Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits [or Records] 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.


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, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

On appeal, the applicant asserts that he has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. The applicant asserts that due to the passage of time and several moves, he has lost any additional evidence.

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).

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 continuously resided in the United States in an unlawful status during the requisite period. Here, the applicant has failed to meet this burden.

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided the following evidence:

Affidavits notarized June 28, 1993, from [REDACTED] and [REDACTED] of Compton, California, who asserted that they have known the applicant since his arrival in the United States, and attested to the applicant's Compton address at [REDACTED] from January 1981 to May 1990.

Affidavits notarized June 29, 1993, from [REDACTED] co-owner of [REDACTED] [REDACTED] in Lynwood, California, who indicated that the applicant was in his employ as a driver at [REDACTED] from January 1981 to September 1989. The affiant attested to the applicant's absence to Mexico from September 2, 1987, to September 29, 1987.

On August 6, 2003, the director issued a Form I-72, which requested the applicant furnish proof of his continuous presence in the United States from 1981 to 1988. The applicant, however, failed to comply with the request.

According to the interviewing officer's notes, at the time of the applicant's interview on May 9, 2005, the applicant indicated that he first arrived in the United States in 1970, stayed for five years and did not return until 1982. The applicant further indicated that he resided in different places (Euclid, Carlin) in Compton.

On May 9, 2005, the director issued a Form I-72, which requested the applicant to submit the birthdates of his six children as neither his Form I-687 nor Form I-485 application listed this information.

In response to the Notice of Intent to Deny, dated November 9, 2005, the applicant provided the birthdates of his children. The applicant stated that he had lost most of his documentation due to the passage of time and several moves and that he did not have any further evidence to submit to establish his residence during the period in question.

The evidence of record submitted does not establish with reasonable probability that the applicant was already in the United States before January 1, 1982, and that he was in a continuous unlawful status since that date through May 4, 1988.

[REDACTED]'s affidavit has little probative value as it failed to list the applicant's address of record during the period of employment, 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 by 8 C.F.R. § 245a.2(d)(3)(1).

██████████ and ██████████ attested to the applicant's residence at ██████████ in Compton. However, as previously noted, the applicant, at the time of his interview, did not list ██████████ as an address where he resided during the requisite period. No evidence such as a lease agreement, rent receipts, or utility bills was submitted to corroborate the affiants' affidavits. Furthermore, neither affiant provided any detail regarding the nature or origin of their relationships with the applicant or the basis for their continuing awareness of the applicant's residence.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Given the credibility issues arising from the documentation provided by the applicant, it is determined that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982 and resided in this country in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant 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.