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U.S. Citizenship
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Services

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FILE:

MSC 02 231 60248

Office: CHICAGO

Date:

MAY 23 2008

consolidated herein]

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits 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.

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, 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 through May 4, 1988.

On appeal, counsel for the applicant submits a brief statement and resubmits documentation previously provided.

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 states 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 petitioner 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 petitioner 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 or petition.

The regulations at 8 C.F.R. § 245a.2(d)(3) provide an illustrative list of contemporaneous documents that an applicant may submit. While affidavits “may” be accepted (as “other relevant documentation”) [See 8 C.F.R. § 245a.2(d)(3)(vi)(L)] in support of the applicant’s claim, the regulations do not suggest that such evidence alone is necessarily sufficient to establish the applicant’s unlawful continuous residence during the requisite time period.

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 regulation at 8 C.F.R. § 245a.2(d)(3)(v), states that attestations from churches, should: identify the applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where the applicant resided during the membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

In or about May 1991, the applicant applied for class membership in a legalization class-action lawsuit and submitted a Form I-687, Application for Status as a Temporary Resident. On May 20, 2002, the applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

In a Notice of Intent to Deny (NOID), dated April 11, 2005, the district director noted the applicant had provided “attendance records” from Clement Industries for [REDACTED] for the years 1979 through 1985, and for [REDACTED] for the years 1987 and 1988, but had failed to establish that he, [REDACTED] had established his continuous unlawful residence in the United States from prior to January 1, 1982, through May 4, 1988. The district director granted the applicant 30 days to submit any information he felt relevant to his case.

The district director determined the applicant had failed to respond and denied the application in a Notice of Decision (NOD), dated July 21, 2005, based on the reasons stated in the NOID. The applicant filed a timely appeal from that decision on August 19, 2005.

On appeal, counsel asserts that the applicant did, in fact, respond to the NOID, by resubmitting an employment verification letter and attendance records from Clement Industries, establishing that the applicant, [REDACTED] worked for the company from May 1978 to December 1996.

The issue in this proceeding is whether the applicant has furnished sufficient evidence to establish that he continuously resided in the United States in an unlawful status before January 1, 1982 through May 4, 1988.

A review of the record reflects that the applicant did, in fact, respond to the NOID by resubmitting documentation previously provided. However, the AAO concludes that the applicant has not provided sufficient evidence to establish his continuous unlawful presence in the United States from January 1, 1982 to September 1987. With regard to that time period, the applicant has provided the following documentation:

1. A letter, notarized on May 13, 1991, from [REDACTED] stating that the applicant was a tenant at [REDACTED] Chicago, Illinois, from July 1982, to December 1986.
2. A notarized letter, dated September 19, 1990, from [REDACTED], stating that he rented an apartment at [REDACTED] (no city or state indicated) to the applicant, (the applicant's father), and [REDACTED] from January 1980 through July 1982,
3. A letter, dated September 17, 1990, from [REDACTED], Associate Pastor of Our Lady of Tepeyac, Chicago, Illinois, stating that the applicant was a non-registered parishioner at St. Ludmillas parish (which was consolidated with St. Casimir parish in July 1990 and became a new parish under the name of Our Lady of Tepayac) since 1978.
4. A letter, dated May 13, 1991, from [REDACTED] owner of "[REDACTED]" Chicago, Illinois, stating that the applicant had been a client for about six years.
5. An undated letter from [REDACTED], stating that the applicant worked for him as a mechanic from August 1985 to July 1987.
6. A fill-in-the-blank affidavit, notarized on April 19, 1991, from [REDACTED] stating that the applicant resided in Cicero, Illinois, and departed the United States from May 30, 1987 to July 12, 1987.

Although the applicant has submitted several affidavits in support of his application, he has not provided sufficient 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. While not required, the affidavits are not accompanied by proof of the affiants' identification or any evidence that they resided in Chicago during the relevant period, and otherwise lack details that would lend credibility the affiants' relationships with the applicant. As such, they can be afforded minimal weight as evidence of the applicant's residence and presence in the United States for the requisite period.

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, 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, through May 4, 1988.

Furthermore, [REDACTED] (see No. 1, above) was contacted on August 29, 2006, and admitted that she only rented the property where she indicated the applicant had resided and, in fact, did not know the applicant and never rented the property to him.

Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any 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. (Comm. 1988).

It is concluded that the applicant has failed to establish that he resided in continuous unlawful status in the United States from before January 1, 1982, 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.