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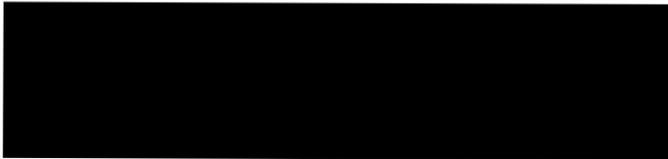
Applicant:



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 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 "Robert P. 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 Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The 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.

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.

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). *See* 8 C.F.R. 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.13(f). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

The applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status, under the LIFE Act on September 24, 2001.

In a Notice of Intent to Deny (NOID), dated February 1, 2005, the director determined that the applicant had failed to submit sufficient evidence to demonstrate his continuous unlawful residence in the United States from prior to January 1, 1982, through May 4, 1988. In a Notice of Decision (NOD), dated March 17, 2005, the director denied the application based on the reasons stated in the NOID.

The applicant, through counsel, filed the current appeal from the director's decision on April 11, 2005. On appeal, counsel asserts that the director failed to properly evaluate/consider materials submitted in support of the Form I-485; the materials/documents and testimony provided by the applicant clearly support his eligibility for adjustment of status under the LIFE Act; and, the evidence provided clearly meets the "preponderance of evidence test," establishing the applicant's continuous unlawful residence in the United States from before January 1, 1982, through May 4, 1988.

The issue in the proceeding is whether the applicant has submitted sufficient documentation to establish, by a preponderance of the evidence, that he entered the United States before January 1, 1982, and resided in a continuous unlawful status from then through May 4, 1988.

A review of the record reveals that the applicant has provided the following documentation throughout the application process in an attempt to establish his unlawful presence and residence in the United States **during the requisite time period**:

Employment Letters

- A letter, dated November 7, 1986, from ON TV, Chicago, Illinois, stating that the applicant had been employed since March 30, 1981.
- A letter, dated March 22, 1988, from [REDACTED] an accountant in Freeport, New York, stating that the applicant had been employed at Great Neck Pizza and Restaurant since January 1, 1988.

- A letter, dated February 16, 2005, from [REDACTED] of Chicago Korean Broadcasting, stating that the applicant was employed part-time as a general maintenance man by his family from February 1982 to July 1984.

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.

None of the employment letters provided show the applicant's addresses at the time of his employment, identify the exact periods of employment, show periods of layoff, or 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. Furthermore the letters from ON TV and Great Neck Pizza and Restaurant do not identify the applicant's duties with those companies. The letter from [REDACTED] is not on Great Neck Pizza and Restaurant stationery and it is unclear as to what his relationship is/was with that company.

Affidavits from Acquaintances

- A letter, dated March 7, 1988, from [REDACTED] owner of Café 75, Jackson Heights (no city provided), stating that he had known the applicant for the past five years.
- A fill-in-the-blank "testimony of facts," dated May 19, 1990, from [REDACTED] of Chicago, Illinois, stating that he and the applicant traveled together to the United States in 1981 and have been friends since that time. In a letter from [REDACTED] dated July 17, 1990, he states that the applicant left the United States on vacation from around June to July 1987.
- A fill-in-the-blank "testimony of facts," dated May 19, 1990, from [REDACTED] of Chicago, Illinois, stating that she has known the applicant since he came to the United States from El Salvador in 1981.

A fill-in-the-blank "testimony of facts," dated May 19, 1990, from [REDACTED] of Chicago, Illinois, stating that he met the applicant at a mutual friend's house on an unspecified date in 1987.

- A "declaration of absence," dated June 17, 1990, from [REDACTED] stating that the applicant left the United States from June 15, 1987, to July 16, 1987.

- An “Affidavi of Fact,” dated February 21, 2005, from [REDACTED] of Chicago, Illinois, stating that he had known the applicant since June 1982 and that since then they have communicated and visited each other often.
- A letter, dated February 17, 2005, from [REDACTED] stating that the applicant is “a good friend of the family” and used to help his father in his garage in 1981-1983.

The affidavits are not accompanied by any evidence that the affiants actually resided in the United States during the relevant period. The affiants are generally vague as to how they date their acquaintances with the applicant, how often and under what circumstances they had contact with the applicant during the requisite period, and lack details that would lend credibility to their claims. It is unclear as to what basis the affiants have direct and personal knowledge of the events and circumstances of the applicant’s residence in the United States. As such, the statements can be afforded minimal weight as evidence of the applicant’s residence and presence in the United States during the requisite time period.

Business Letters

- A letter, dated February 16, 2005, from [REDACTED], Chicago, Illinois, stating that the applicant had been a client since 1981.
- A letter, dated February 16, 2005, from [REDACTED] of Supreme Photo & Services, Chicago, Illinois, stating that the applicant had been a client since 1982.

These business letters suffer from the same deficiencies as the affidavits from acquaintances noted above.

Landlord Letter

- A fill-in-the-blank statement, dated May 18, 1990, from [REDACTED] stating that she had been the applicant’s landlord at [REDACTED] Chicago, Illinois, since February 1981.

The landlord letter is not accompanied by any corroborative documentation such as a rental, agreement, lease, or rental receipts.

Pastor Letter

- A letter, dated April 23, 2003, Fr. [REDACTED] Pastor of St Francis of Assisi Church, Chicago, Illinois, stating that the applicant had been a parishioner since 1981.

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 this case, [REDACTED] has not established how he knows the applicant or the origin of the information being attested to.

Photographs

- Photocopies of photographs of the applicant allegedly taken in Chicago from 1986 through 1987.

The photographs offer no evidence whatsoever that the applicant was in the United States from prior to January 1, 1982 through an unspecified date in 1986.

In summary, the applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), and no hospital or medical records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv). The applicant has provided no church attestations that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(v). Furthermore, the applicant also has not provided documentation (including, for example, money order receipts, passport entries, children's birth certificates, bank book transactions, letters of correspondence, a Social Security card, or automobile, contract, and insurance documentation) according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (K). The documentation provided by the applicant consists solely of photographs dated after an unspecified date in 1986 and third-party affidavits ("other relevant documentation") lacking specific details as to how the affiants knew the applicant – how often and under what circumstances they had contact with the applicant – during the requisite time period from 1982 through 1988.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. 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.

The regulation at 8 C.F.R. § 245a.12(e) provides that "[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods." Preponderance of the evidence is defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5th ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

Given the insufficiency in the evidence, the AAO determines 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 since that time 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, 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.