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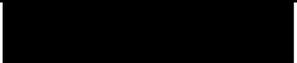
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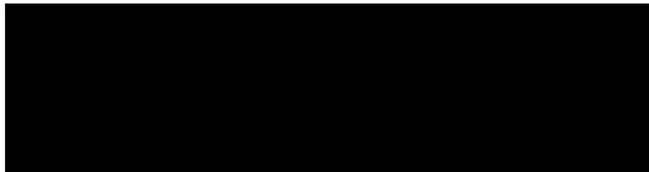
MSC 02 215 63280

Office: ATLANTA

Date:

OCT 03 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:



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 "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 Director, Atlanta, Georgia, 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.

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 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 in or about September 1991, the applicant submitted a Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act). In connection with that application, the applicant provided documentation stating that he had initially entered the United States in April 1981, had departed the United States on only one occasion since that date – from June 20, 1987 to July 28, 1987 – in order to visit his sick mother in Mexico, and had never used any other name.

On May 3, 2002, the applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act. In support of his application, the applicant provided an affidavit stating, in part, that he first entered the United States without inspection in June 1981, and that he was employed by Cowden Metal Specialties, Inc., in City of Industry, California, using the name [REDACTED], until moving to Chicago, Illinois, in November 1981, where he worked part-time at L'Escargot restaurant until 1983 using the name [REDACTED]. He stated that in 1982, he was also employed as a part-time cook by the [REDACTED] of Chicago at Tango restaurant, and in 1983 continued to work part-time at both L'Escargot and Tango (where he worked until it closed in January 1985). He also stated that in 1984, he began using his real name, [REDACTED], and Social Security number [REDACTED]. Furthermore, the applicant indicated that he had been absent from the United States on several occasions – from mid-December 1982 to early January 1983; from March 1985 to April 1985; from December 22, 1985, to early January 1986; and, from December 1990 to March 12, 1991.

The applicant also submitted the following documentation:

1. An affidavit, dated June 22, 2001, from [REDACTED] (the applicant's sister) and her husband, Felipe, stating that the applicant lived with them at [REDACTED] El Monte, California, from June to November 1981, and that, while working at Cowden Metal Specialist, Inc., he used the name

2. A 1981 Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, issued to [REDACTED] at [REDACTED] El Monte, California, showing earnings from Cowden Metal Specialties, Inc., City of Industry, California.
3. 1982 and 1983 IRS Forms W-2 issued to [REDACTED] at [REDACTED] Chicago, Illinois, showing earnings from L'Escargot on Michigan, Chicago, Illinois.
4. Earnings statements issued to [REDACTED], dated December 1982, December 1984, January 1985, and May through August 1986.
5. 1984, 1985, and 1986 IRS Forms W-2 issued to [REDACTED] at [REDACTED] [REDACTED], Chicago, Illinois, by Jolle Corporation.
6. An un-notarized letter, dated June 2, 2001, from [REDACTED] of [REDACTED], [REDACTED], Chicago, Illinois, stating that the applicant was a tenant in his apartment from 1984 to 1990.
7. An un-notarized letter, dated June 11, 2001, from [REDACTED] of Wheeling, Illinois, stating that the applicant was employed part-time from February through December 1985.
8. Earnings statements from [REDACTED] Restaurant, issued to [REDACTED], dated August 1986 through May 1987.
9. A 1986 IRS Form W-2 issued to [REDACTED] z showing earnings at [REDACTED] Restaurant.
10. An un-notarized handwritten letter, dated June 7, 2001, from [REDACTED], Personnel, on [REDACTED]'s Restaurant, Park Ridge, Illinois, letter-head stationery, stating that the applicant was employed part-time as a bus boy from June 1987 to November 1989.

On August 3, 2004, the applicant was interviewed in connection with his Form I-485. At interview, the applicant was issued a Form I-72, Request for Evidence (RFE), requesting that he submit evidence of his continuous unlawful residence in the United States from prior to January 1, 1982, through May 4, 1988; his continuous physical presence in the United States from November 6, 1986, through May 4, 1988; and, evidence that he had been known by any other name(s).

In response, counsel submitted a letter stating that the applicant had no official documents showing that he was known as [REDACTED], and that efforts were, instead, concentrated on proving the applicant's presence in California between June and November 1981 under the name of [REDACTED]. [REDACTED]. As new documentation, counsel submitted:

11. A letter, notarized on October 25, 2007, from [REDACTED] stating that he had known the applicant as [REDACTED] from June 1981 to November 1981, because he picked him up to go to work at Cowden Metal Specialties.
12. An envelope, postmarked September 9, 1981, showing the applicant's return address as [REDACTED], El Monte, California, mailed to [REDACTED] (the applicant's aunt) in Durango, Mexico.

In a Notice of Intent to Deny (NOID), dated October 28, 2005, the director determined that the documentation provided by the applicant, including the Form W-2 issued to [REDACTED] (No. 2, above) and the affidavit signed by [REDACTED] (No. 11) were insufficient to establish the applicant's eligibility for the benefit sought. The director granted the applicant 30 days to submit additional evidence demonstrating his continuous unlawful residence in the United States from prior to January 1, 1982, through May 4, 1988.

In response to the NOID, the applicant summarized his previous submissions with respect to his presence in the United States in 1981 and 1982, and submitted the following additional documentation:

13. A letter, dated August 28, 1981, with English translation, that the applicant had written to his aunt in 1981 (see No. 12, above). In the letter, the applicant describes his shift-work at "Cawden [sic]."
14. An affidavit, dated November 19, 2005, from [REDACTED] (another of the applicant's sisters) stating that the applicant came to the United States from Mexico in 1981, initially resided with their sister, [REDACTED] and her husband in El Monte, California, and moved to Chicago sometime before Christmas 1981.
15. A statement from [REDACTED] (the applicant's brother) and his son, [REDACTED], stating that an attached photograph was taken of the applicant with [REDACTED] at [REDACTED]'s home in Chicago in 1981. The affiants provided their telephone numbers and addresses for contact.
16. Additional photocopies of pay stubs, dated January through March 1982, issued to [REDACTED] by Jolle Corporation.

In a Notice of Decision (NOD), dated September 7, 2006, the director denied the application. The applicant, through counsel, filed a timely appeal from that decision on October 11, 2006. On appeal, counsel asserts that the NOD is vague and does not address with specificity what evidence was found to be insufficient, the NOID ignored relevant evidence submitted post-interview, and the evidentiary record supports the applicant's claim to eligibility for adjustment of status under the LIFE Act.

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).

The issue in this proceeding is whether the applicant has established, by a preponderance of the evidence, that he continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

Based on the documentation provided in Nos. 4, 12, 13, and 16, above, it appears that the applicant was present in the United States in August and September 1981; January through March 1982; and December 1982. Based on the documentation provided in Nos. 4, 5, 8, and 9, it appears the applicant was present in the United States for periods of time from 1984 through May 1987. It is noted, however, that his 1985 IRS Form W-2 shows earnings of only \$568.00 for that year.

The employment letters provided in Nos. 7 and 10 are not notarized and do not comply with the requirement at 8 C.F.R. § 245a.2(d)(3)(i) in that they do not provide the applicant’s address at the time of employment; identify the exact period 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.

With regard to No. 3, the 1982 and 1983 IRS Forms W-2 are issued in another person’s name, and, as counsel stated in response to the RFE, the applicant has nothing to submit to establish that he was ever known by that name. No. 2, the 1981 IRS Form W-2, is also issued in another person’s name and the only documentation provided to establish that the applicant ever used that name are affidavits from a relative and an acquaintance, Nos. 1 and 11.

The affidavits from the applicant’s relatives, Nos. 1, 14, and 15, above, merely attest to his having been present in the United States in 1981.

The affidavit provided in No. 6 is not notarized and provides little evidentiary weight or probative value.

Furthermore, there are discrepancies noted in the record regarding the applicant’s addresses, use of other names, and absences from the United States since his initial entry. On his Form I-687, the applicant indicated that he lived in El Monte, California, from 1981 to 1984. However, in No. 14, above, his sister states that he moved to Chicago, Illinois prior to Christmas 1981, and other evidence presented indicates that he was in Chicago in 1981, 1982, and 1983. In 1991, the applicant stated that he had never used another name and had only been absent from the United States once -

in 1987. In 2002, he stated that he had used two aliases from 1981 to 1985, and had departed the United States four occasions – in 1982/1983, 1985, 1985/1986, and 1990/1991.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

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

Based on the lack of sufficiently detailed documentation and discrepancies contained in the record, it is determined that the applicant has failed to establish, by a preponderance of the evidence, that he entered the United States before January 1, 1982, and maintained continuous unlawful residence since such date through May 4, 1988, as required for eligibility for adjustment of status to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Thus, 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.