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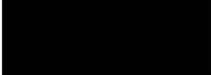
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FILE:



Office: NEW YORK

Date: OCT 31 2008

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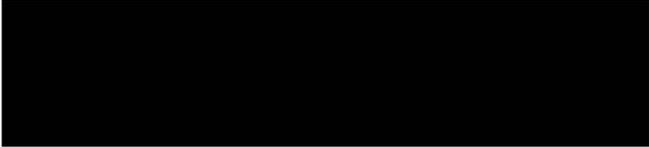
Applicant:



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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied, reopened, and again denied by the Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant failed to establish that he entered the United States before January 1, 1982, and resided in a continuous unlawful status from then through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel for the applicant submits a brief statement and photocopies of 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.

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 past employment should be on employer letterhead stationery, if the employer has such stationery, and 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 reveals that, in or about 1990, 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 (Under Section 245A of the Immigration and Nationality Act. The applicant claimed to have initially entered the United States without inspection in March 1981, and to have departed the United States on only one occasion – from July 10, 1987 to August 15, 1987, in order to visit a friend in Canada.

On June 3, 2002, the applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status, under Section 1104 of the LIFE Act. On March 9, 2006, the director issued a Notice of Intent to Deny (NOID) the application.

On March 17, 2006, the director denied the application in a Notice of Decision (NOD).

On April 17, 2006, counsel submitted a request that the application be reopened, and on September 25, 2006, the director reopened the application and issued a second NOID.

On October 25, 2006, counsel responded to the NOID.

On April 23, 2007, the director again denied the application in a NOD. The director stated in the NOD that the applicant had failed to respond to the NOID.

On May 23, 2007, counsel filed an appeal from the director's decision. On appeal, counsel states that the director is erroneous to state in her denial that the applicant failed to submit additional

evidence for consideration, and that the director failed to consider additional evidence timely submitted by the applicant in response to a Notice of Intent to Deny (NOID) the application dated September 25, 2006. The record, however, reflects that in response to the NOID regarding the applicant's Form I-485, counsel did submit a letter, dated October 24, 2006 (received on October 25, 2006).

The AAO will review this matter on a *de novo* basis.¹

The record reflects that the applicant has provided the following documentation throughout the application process in an effort to establish that he entered the United States prior to January 1, 1982, and resided in the United States continuously in unlawful status since that date through May 4, 1988:

Regarding Residence

1. A letter, dated July 28, 2004, from [REDACTED] of [REDACTED] Furniture, Bronx, New York, stating that the applicant had been a customer since 1985.
2. A letter, dated September 30, 2004, from [REDACTED] of Bronx, New York, stating that he had known the applicant "for about 17 years since 1987."
3. A letter, dated September 23, 2004, from [REDACTED] of Bronx, New York, stating that he had known the applicant since 1986.
4. A letter, dated April 11, 2006, from [REDACTED] of Bronx, New York, stating that she had known the applicant since 1986.

Regarding Employment

5. An un-dated, un-notarized letter from [REDACTED], stating that the applicant worked at Popular Construction Inc., Brooklyn, New York, on an irregular basis from January 1984 to December 1985.
6. A letter, notarized on March 22, 1991, from [REDACTED], stating that the applicant worked for S.S.C. Construction Corp., [REDACTED] Bronx, New York, from January 1983 to November 1990.

¹ The AAO maintains plenary power to review this matter on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also*, *Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The federal courts have long recognized the AAO's *de novo* review authority. *See*, e.g. *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

7. An undated, un-notarized hand-written letter from (name not completely legible, but it appears to be "[REDACTED]") stating that the applicant had worked for S.S.C. Construction Corp., [REDACTED], Bronx, New York, since January 1986.

Regarding Tenancy

8. A hand-written letter, notarized on August 23, 1990, from (name not completely legible, but it appears to be "[REDACTED]"), stating that the applicant was his room-mate at [REDACTED], Bronx, New York, 10458, from March 1981 to February 1983.
9. A letter, dated August 19, 1990, from [REDACTED], stating that he knew the applicant since March 1981, and that "[the applicant] used to share with me" at [REDACTED], Bronx, New York, up to February 1983, and that the applicant paid rent of \$85.00 per month. A photocopy of the first page of an apartment lease, showing that [REDACTED] rented an apartment at [REDACTED], Bronx, New York, from March 1, 1981, to February 28, 1983, was also submitted.
10. A letter, notarized on April 13, 1991, from [REDACTED], of [REDACTED], Bronx, New York, stating that the applicant "...used to my basement from: 1983 up to Dec, 1985. Gas and electric was free."
11. A hand-written letter, dated March 23, 1991, from [REDACTED], stating that the applicant was his tenant, paying \$150.00 per month, at [REDACTED], Bronx, New York, from January 1986 to the end of 1990.

Regarding Absence from the United States in July/August 1987

12. Hand-written letters, notarized on August 22, 1990, from [REDACTED], stating that he had known the applicant for a long time and remembers that he went to Canada for a trip in July 1987.
13. An affidavit, notarized on September 4, 1990 in the Province of Quebec, Canada, from [REDACTED] of [REDACTED], City of St.-Laurent, Quebec, Canada, stating that the applicant visited him from July 10, 1987, to August 15, 1987.
14. Letters, notarized on September 4, 1991, and February 20, 1992, from [REDACTED] of Bronx, New York, stating that he drove the applicant to and from Montreal, Canada, from July 10, 1987, to August 15, 1987.

Other documentation

15. Photocopies of envelopes addressed to the applicant in the United States at [REDACTED] [REDACTED] Bronx, New York, postmarked on what appears to be June 1981 and February 1984; and at [REDACTED] [REDACTED] Bronx, New York, postmarked on what appears to be July 19, 1983. The originals of the envelopes are not contained in the record for closer examination.

The affiants in Nos. 1 through 4, above, attest to the applicant's presence in the United States in or after an unspecified date in 1985. None of the employment letters provided in Nos. 5 through 7 comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i), as outlined above, and only attest to the applicant's presence in the United States in or after an unspecified date in January 1983. The affiants in Nos. 12 through 14 attest to the applicant having taken a return trip from New York to Canada in July/August 1987. As such, these statements can be afforded no evidentiary weight or probative value as to the applicant's entry into the United States prior to January 1, 1982.

With regard to the information provided regarding the applicant's tenancy, it appears, in Nos. 8 and 9, above, that [REDACTED], and [REDACTED] may be one and the same person, attesting that the applicant resided with him at [REDACTED], Bronx, New York from March 1981 until February 1983. The applicant then rented from [REDACTED] from 1983 to 1985 (No. 10) and from [REDACTED] from 1986 to 1990 (No. 11), at [REDACTED] [REDACTED] Bronx, New York – the same address as that listed for S.S.C. Construction Corp., in the employment letters signed by [REDACTED] and what appears to be [REDACTED] (who, again, may be one and the same person) in Nos. 6 and 7. The photocopy of one of the envelopes noted in No. 15, showing what appears to be a postmark date of February 1984 was addressed to [REDACTED] [REDACTED] Bronx, New York, but the applicant claims to have been living at [REDACTED] at that time.

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), no hospital or medical records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv), and no attestations from churches, unions, or other organizations. The applicant also has not provided documentation (including, for example, money order receipts, passport entries, children's birth certificates, bank book transactions, 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 (D), and (F) through (K). The documentation provided by the applicant consists solely of photocopies of envelopes that are not clear and third-party affidavits ("other relevant documentation") that lack specific details as to how the affiants knew the applicant – how often and under what circumstances they had contact with the applicant – throughout the requisite time period.

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 AAO concludes that the applicant has not met his burden of proof. He 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). Thus, he is ineligible for permanent resident status under section 1104 of the LIFE Act.

It is noted that the record reveals that the applicant was found guilty of a violation of section 240.26 of the New York Penal Code, Harassment in the Second Degree, on December 28, 2000, in the Criminal Court of the City of New York, County of Bronx, for which he received one year conditional discharge and one year order of protection.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.