



U.S. Citizenship
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Services

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FILE:

[Redacted]

Office: ATLANTA

Date:

SEP 02 2008

[Redacted] - consolidated herein]

MSC 03 189 62830

IN RE:

Applicant:

[Redacted]

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:

[Redacted]

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.

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, Atlanta, Georgia, and is now before the Administrative Appeals Office 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 from then through May 4, 1988.

On appeal, counsel for the applicant submits a brief 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.

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 April 7, 2003.

In a Notice of Intent to Deny (NOID), dated August 28, 2006, the district director determined that the applicant had failed to submit sufficient evidence demonstrating 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 1, 2007, the district director denied the application based on the reasons stated in the NOID. The applicant, through counsel, filed the current appeal from the district director's decision on April 4, 2007. On appeal, counsel asserts that the applicant has clearly met his burden of proof that he entered the United States before January 1, 1982, and resided in continuous unlawful status since such date 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:

1. An un-notarized fill-in-the-blank "affidavit," dated April 23, 1991, from [REDACTED] (no address or contact number was given and it is not known what, if any, the affiant's relationship with the applicant is), stating that she financially supported the applicant from April 1981 to March 1985.
2. Similar un-notarized fill-in-the-blank "affidavits of witness," dated May 1991, from [REDACTED] of Rosemead, California (who states he is the applicant's cousin, and [REDACTED] and [REDACTED] of Rialto, California (who state they are personal friends of the applicant), attesting to their personal knowledge that the applicant lived in La Puente, California, from April 1981 to August 1990, and in Ontario, California, from August 1990 to the date of signing the affidavits in May 1991.
3. An un-notarized fill-in-the-blank "corroborative affidavit," dated May 10, 1991, from [REDACTED] (see No. 2, above), stating that he and the applicant visited Mexico for a month of vacation in June 1987 – having left through El Paso, Texas, and re-entered through Mexicali, Mexico.

4. A photocopy of a letter, dated May 5, 1991, from [REDACTED], of [REDACTED] Tree Service (no address provided), stating that the applicant was employed as a gardener's helper from May 15, 1981, until September 6, 1989.

The fill-in-the-blank documents in Nos. 1, 2, and 3, above, are not notarized, nor are they supported by evidence establishing the identifications and/or actual residences of the affiants in the United States during the period of time in which they attest to having knowledge of the applicant. The affiants do not provide any details as to their knowledge of the applicant's entry, how they date their acquaintances with the applicant, how often they had contact with the applicant during the requisite period, or any other details that would lend credibility to their having direct and personal knowledge of the events and circumstances of the applicant's residence in the United States during the relevant period. As such, these affidavits afford minimal weight and little probative value as evidence of the applicant's residence and presence in the United States during the relevant period. Furthermore, the employment letter, No. 4, does not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i) in that it fails to provide the applicant's address at the time of employment, declare whether the information was taken from company records, identify the location of such company records, 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.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).

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 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, an automobile contract, or 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 third-party affidavits ("other relevant documentation") that lack evidentiary weight and probative value.

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. It is concluded 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.