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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES

Date:

SEP 03 2008

MSC 03 247 60943

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. 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 by the District Director, Los Angeles, California, 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. The director also noted that the applicant stated on April 17, 1992, during an interview, that he first entered the United States in 1987, and concluded, therefore, that the applicant had not established that he was eligible for class membership pursuant to the CSS/Newman Settlement Agreements.

On appeal, counsel for the applicant asserts that the applicant has established his eligibility. Counsel submits a brief and additional evidence on appeal.

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 stated 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 applicant 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 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.

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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.

In the Notice of Intent to Deny (NOID), dated August 19, 2006, the director stated that the applicant failed to submit evidence demonstrating his continuous unlawful residence in the United States during the requisite period. The director noted that during an interview on April 17, 1992, the applicant stated that he first entered the United States in 1987, and the applicant also signed a Sworn Statement confirming that he first entered the United States in 1987. The director granted the applicant thirty (30) days to submit additional evidence.

In his response to the NOID, the applicant submitted a notarized letter stating that during the interview on April 17, 1992, he did not speak English and barely understood English, at the interviewing officer's insistence, to appease the officer, he stated that he had first entered the United States in 1987. No other evidence was submitted.

In the Notice of Decision, dated October 3, 2006, the director denied the instant application based on the reasons stated in the NOID.

On appeal, counsel reasserts that the applicant has submitted sufficient evidence to establish the requisite continuous residence, and has adequately explained the reasons for his statement during the April 17, 1992 interview wherein he stated the he had first entered the United States in 1987.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period. The applicant submitted letters of employment and affidavits as evidence to support his Form I-485 application. The AAO has examined the record in its entirety. Here, the submitted evidence is not relevant, probative, and credible.

Employment Letters

The applicant submitted letters of employment from:

1. A letter from [REDACTED], notarized on March 14, 1992. Mr. [REDACTED] states that the applicant had been employed as a laborer at his lawn service located at [REDACTED], Ontario, California, from November 1981 to June 1985.
2. A letter of employment from [REDACTED] notarized on March 12, 1992. Mr. [REDACTED] states that the applicant had been employed in his gardening and landscaping business located at [REDACTED], Ontario, California, from November 1981 to May 1985.
3. A letter of employment from [REDACTED], notarized on March 14, 1992. Mr. [REDACTED] states that the applicant had been employed as a laborer at his lawn service located at [REDACTED] Redlands, California, from June 1985 to July 1987.
4. A letter of employment from [REDACTED], notarized on March 14, 1992. Mr. [REDACTED] states that the applicant had been employed as a laborer at his Shingles-Tejas business located at [REDACTED] Glendale, California, from June 1985 to July 1987.
5. A letter of employment from [REDACTED] notarized on March 12, 1992. Mr. [REDACTED] states that the applicant had been employed as a painter operator at [REDACTED] Ontario, California, from July 1987 to July 1990.

It is noted however, that the employment letters failed to 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 as required under 8 C.F.R. § 245a.2(d)(3)(i).

Affidavits

The record reflects that the applicant submitted the following form affidavits from:

1. [REDACTED] notarized on March 10, 1992, attesting that the applicant entered the United States through California, on November 2, 1981. The affiant, however, does not indicate whether the applicant has been a continuous resident since that time.
2. [REDACTED] notarized on March 12, 1992, attesting that the applicant resided in the United States since 1981. Ms. [REDACTED] states that she and the applicant are friends.
3. [REDACTED] notarized on April 11, 2006. Mr. [REDACTED] states that the applicant, his brother, has resided in the United States since 1981.
4. [REDACTED], notarized on April 11, 2006. Ms. [REDACTED] states that the applicant, her brother, has resided in the United States since 1981.

5. [REDACTED], notarized on November 19, 1992, attesting that the applicant resided in the United States since 1981. Mr. [REDACTED] states that he and the applicant are good friends.
6. [REDACTED] notarized on November 18, 1992, attesting that the applicant resided in the United States since 1981. Mrs. [REDACTED] states that the applicant is a family friend.

In addition, the applicant has submitted various documents, including tax documents and earnings statements. These documents, however, are dated after the requisite period, and are therefore, not relevant.

As noted above, at the applicant's interview on April 17, 1992, he testified and also signed a sworn statement, stating that he first entered the United States in 1987. The applicant states on appeal that he entered the United States in 1981, however, he has failed to submit any reliable evidence to support his assertion, or to overcome his testimony and sworn statement of April 17, 1992 confirming that he first entered the United States in 1987, after the beginning of the requisite period.

The applicant has submitted five employment letters and six affidavits. However, as stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period. None of the affiants indicated how they dated their acquaintance with the applicant, or how frequently they saw the applicant. Two of the affiants are the applicant's siblings, and failed to provide details, such as activities they have had with the applicant and how they date the applicant's arrival in the United States. 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 are not relevant and have 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.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence 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.