

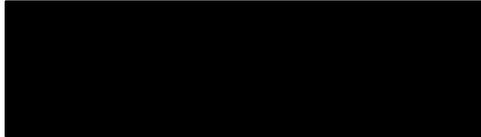
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC 02 248 65866

Office: LOS ANGELES

Date: SEP 26 2008

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:

SELF-REPRESENTED

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: On December 21, 2006, the District Director, Los Angeles, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application, finding that the applicant did not establish, by a preponderance of the evidence, that he entered the United States before January 1, 1982, and resided continuously in the United States, prior to January 1, 1982, and through May 4, 1988.

On appeal, the applicant asserts that it has been difficult to gather documentation because it has been so long since his initial application. He asserts that he has been able to find documents bearing the name [REDACTED] and submits those documents and additional affidavits from friends and neighbors who knew him during the statutory period.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. See § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite period, 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 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 or 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 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 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.12(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 on June 5, 2002, the applicant submitted the current application. On May 2, 2006, the applicant appeared for an interview based on the application.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden of establishing by a preponderance of the evidence, that his claim of entry into the United States before January 1, 1982, and continuous residence in the United States during the requisite period is probably true. Upon examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has failed to meet this burden.

The record of proceeding contains the following evidence relating to the requisite period:

Contemporaneous Evidence

- 1981, 1982, and 1983 Internal Revenue Service (IRS) Forms 1040A, Individual Income Tax Returns, and IRS Forms W-2, Wage and Tax Statements, and an employment verification letter dated September 26, 1990, all in the name of [REDACTED]. The letter, signed by [REDACTED], from the payroll department of [REDACTED] Furniture indicates that [REDACTED] was hired on October 11, 1979, and was then laid off on July 18, 1980. He was then recalled on November 20, 1980, and worked there until November 20, 1981. These documents can be given minimal weight as evidence of the applicant's continuous residence during the required period, as they do not establish that the applicant was using the assumed name Luis Beltran and the applicant and [REDACTED] are the same person. The applicant submits an affidavit from a friend who refers to the use of this assumed name (see affidavit from [REDACTED]). This affidavit, however, is insufficient to meet the applicant's burden of proof that he indeed is the person named in these documents.

Letters and Affidavits

- Five “Affidavit of Witness” all sworn to on January 12, 2007. The forms, signed by [REDACTED] indicate that the affiant has personal knowledge that the applicant has resided in Norwalk, California, from varying dates in the 1980s and 1990s to the present. The form allows the affiant to fill in a statement that he or she “is able to determine the date of the beginning of his or her acquaintance with the applicant in the United States from the following fact(s): ____.” [REDACTED] simply added “We were neighbors since [REDACTED] used to live at Nava St. in Norwalk.” [REDACTED] added: “We were neighbors in Norwalk at Molette St. since 1980.” [REDACTED] added: “We have neighbors since 1984 in Norwalk.” [REDACTED] added: “Since we have lived at Nava St. in Norwalk. We were neighbors.” [REDACTED] added: “I have known him through my husband at work, then he moved to the same street we lived in.” These statements can be given minimal evidentiary weight and have minimal probative value as evidence of the applicant’s residence and presence in the United States for the requisite period, as they all lack sufficient detail. Regarding the applicant’s claimed entry into the United States before January 1, 1982, none of the affiants claims to have personal knowledge of such entry. None of the affiants provides specific dates of when they met the applicant, and none of them provides any specific details of the circumstances of the applicant’s residence in the United States;
- An “Affidavit” form dated November 20, 1990. The form, signed by [REDACTED] first allows the applicant to attest to his departure from the United States on May 3, 1987, and his return, without inspection, on May 20, 1987. The affiant’s name was then typed into the appropriate blank. The form language states that the affiant affirms that he knows the “above person, and affirm[s] that his departure and arrival in this country are as stated above are true.” [REDACTED] also states that the applicant worked under the name [REDACTED] from 1979 to 1985. This affidavit can be given minimal weight as evidence of the applicant’s continuous residence in the United States. [REDACTED] provides no details about his personal knowledge of the applicant’s departure. In addition, this affidavit, while possibly confirming the applicant’s absence in 1987, has limited relevance as evidence of his residence in the United States during the requisite period;
- Three “Affidavit of Witness” forms all sworn to in November 1990. The forms, signed by [REDACTED] indicate that the affiant has personal knowledge that the applicant has resided in Norwalk, California, from varying dates in the 1980s and 1990s to the present. The form allows the affiant to fill in a statement that he or she “is able to determine the date of the beginning of his or her acquaintance with the applicant

in the United States from the following fact(s): ____.” All three affiants attest that they the applicant in Mexico before coming to the United States. They all attest that the applicant entered the United States in September 1979 and that they have remained in contact with the applicant. [REDACTED] added: “I help him a lot to get started. He also used the name of [REDACTED] to work in this country. [REDACTED] added: “He is a very honest hardworking individual which I highly recommend.” [REDACTED] added: “We are very good friends. He did not apply for amnesty in 1987/1988 because he was told he did not qualify.” All of the affiants indicate that they can be contacted for additional information if needed. These statements can be given minimal evidentiary weight as evidence of the applicant’s residence and presence in the United States for the requisite period, as they lack sufficient detail. Regarding the applicant’s claimed entry into the United States before January 1, 1982, none of the affiants claims to have personal knowledge of such entry. None of the affiants provides any specific details of the circumstances of the applicant’s residence in the United States; and,

- A letter from [REDACTED] stating that he has known the applicant since 1982 and that as far as he knows, the applicant has been living in the United States ever since. [REDACTED] goes on to comment about the applicant’s good moral character. [REDACTED] does not appear to have knowledge about the specific dates the applicant has resided in the United States or about the locations where he has resided. Lacking such relevant detail, the letter can be afforded only minimal weight as evidence of the applicant’s residence in the United States for the requisite period.

For the reasons noted above, these affidavits can be given little evidentiary weight and are of little probative value as evidence of the applicant’s residence and presence in the United States for the requisite period. 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.

The remaining evidence in the record is comprised of the applicant’s statements and application forms, in which he claims to have first entered the United States without inspection in September 1979, and to have resided for the duration of the requisite period in California. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has failed to do so. In this case, his assertions regarding his entry are not supported by any credible evidence in the record.

Having examined each piece of evidence, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has not shown by a preponderance of the evidence he entered into the United States before January 1, 1982, and that he resided continuously in an unlawful status for the requisite period.

The absence of sufficiently detailed and probative documentation to corroborate the applicant's claim of entry and continuous residence for the entire requisite period, detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.12(e), 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 on affidavits, which lack relevant details, and the lack of any probative evidence of his entry and residence in the United States from prior to January 1, 1982, through May 4, 1988, the applicant has failed to establish by a preponderance of the evidence that he maintained continuous, unlawful residence in the United States as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, 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.