



U.S. Citizenship
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[REDACTED]

FILE: [REDACTED]
MSC 02 243 67166

Office: CHICAGO

Date: **SEP 29 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:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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 Interim Director, Chicago, 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 resided in the United States in a continuous, unlawful status from before January 1, 1982, through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel contends that the applicant has met his burden of proof and demonstrated that, by a preponderance of the evidence, he has continuously resided in an unlawful status in the United States since 1981. Counsel provided previously submitted evidence.

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 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 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 periods, is admissible to the United States and is otherwise eligible for adjustment of status under section 1104 of the LIFE Act. 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.* at 80. 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 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). **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).

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet the burden of establishing, by a preponderance of the evidence, that the applicant’s claim of continuous unlawful residence in the United States during the requisite period is probably true. Upon an 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.

On May 31, 2002, the applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status pursuant to the LIFE Act. Based his own affidavit, dated May 30, 2003, the applicant first entered the United States in January 1981 at the Arizona border without inspection. He contends that he was thirteen years old at the time and has continuously resided in the United States since that time with the exception of an absence for less than one month in August 1987. In support of his claim, he submitted the following documents relevant to the statutory period:

1. An affidavit, dated May 31, 2003, from [REDACTED] owner of Imperial Discount Furniture and previous owner of [REDACTED] Restaurant. The affiant stated that the applicant was employed at [REDACTED]s Restaurant from 1981 through 1988. This affidavit affirms the affiant’s previous affidavit, dated April 22, 1990. The affiant also stated that the applicant was paid cash and worked as a busboy. By regulation, letters from employers should be on employer letterhead stationery if available and must include the applicant’s address at the time of employment, exact period of employment and layoffs, duties with the company; whether the information was taken from official company records; and where records are located and whether CIS may have access to the records; if records are unavailable, an affidavit explaining this shall also state the employer’s willingness to come forward and give testimony if requested. 8 C.F.R. § 245a.2(d)(3)(i). Neither affidavit meets these regulatory standards. They are not on letterhead and do not provide the applicant’s address at the time of employment. In addition, the affiant did not offer to either produce

official company records or to testify regarding unavailable records. These affidavits can be accorded only minimal weight as evidence of residence during the requisite period.

2. The record contains two affidavits of residence from [REDACTED]. In his affidavit, dated April 22, 1990, the affiant stated that the applicant shared an apartment with him at [REDACTED] from 1981 to 1989 and the apartment and all utility bills were in his name. In his affidavit, dated May 28, 2003, the affiant affirmed his previous affidavit and provided a copy of his 1988 W-2 Form, which contains his address at [REDACTED].
3. The record contains five affidavits from affiants who stated that they have known the applicant in the United States since 1981. [REDACTED] stated in two separate affidavits that he has known the applicant in the United States since 1981. [REDACTED] stated that he has known the applicant to have continuously resided in the United States since at least 1981. [REDACTED] stated in two separate affidavits that he has known that the applicant in the United States since at least 1981 until the present. He further stated that in August 1987 the applicant traveled to Mexico to visit his sick mother and returned to the United States in the same month. [REDACTED] is married to the applicant's sister. All of the affiants failed to provide details regarding their claimed friendships with the applicant or to provide any information that would indicate personal knowledge of the applicant's 1981 entry into the United States, his places of residence or the circumstances of his residence over the prior years of their claimed relationships. Although they claimed to have known the applicant since 1981, they failed to note how or where they met him. Lacking relevant details, these affidavits have minimal probative value.
4. The record includes an affidavit, dated May 26, 2003, from [REDACTED]. The affiant stated that she was an active member of the St. Josaphat Church from 1977 until recently and that the applicant was an active member from 1981 to 1989. The affiant failed to provide details regarding her claimed friendship with the applicant or to provide any information that would indicate personal knowledge of the applicant's 1981 entry into the United States, his places of residence or the circumstances of his residence over the prior years of her claimed relationship. Lacking relevant details, this affidavit has minimal probative value.
5. An affidavit, dated April 6, 2003, from [REDACTED] who stated that he has known the applicant since 1984 when he was his neighbor and customer at his restaurant, El Presidente. The affiant failed to provide how frequently he saw the applicant, or to provide any information that would indicate personal knowledge of the applicant's place of residence or the circumstances of his residence over the years of his claimed relationship. Lacking relevant details, this affidavit has minimal probative value.

6. An affidavit, dated May 23, 2003, from [REDACTED] who stated that he has known the applicant since 1981 when they were living in the same building. He stated that the applicant was sharing an apartment with [REDACTED]. The affiant failed to provide any information that would indicate personal knowledge of the applicant's 1981 entry into the United States or the circumstances of his residence over the years of his claimed relationship. The affiant failed to state the address of the building where they resided. Lacking relevant details, this affidavit has minimal probative value.
7. The applicant submitted declarations from two medical centers. In a declaration, dated April 2, 2003, [REDACTED] stated that the applicant has been seen at the Colonial Medical Center since 1981. He stated that they do not have any records on him because he has not been in the clinic for an illness in the last six years, but they do have a prescription for lab work dated in 1981. He also stated that the applicant's son is a patient of the clinic and is regularly seen. He provided the prescription note for the lab work in 1981. [REDACTED] failed to mention the time period or dates during which the applicant's son was a patient. The applicant also submitted a prescription note, dated March 11, 2003, from [REDACTED] who stated that the applicant had been seen in the Ashland Medical Clinic between 1982 to 1988 by [REDACTED]. However, no medical records were submitted. Given the lack of relevant details and medical records, this evidence provides minimal probative value of the applicant's residence in the United States during the statutory period.
8. The record includes a declaration, dated May 10, 1990, from [REDACTED] Pastor at St. Josaphat Church. [REDACTED] stated that the applicant has been a member of the parish since 1981. The declarant affirmed this affidavit with a second declaration, dated March 3, 2003. It is noted that the declarant failed to state the address where the applicant resided throughout the membership period as required under the regulation at 8 C.F.R. § 245a.2(d)(3)(v). He also failed to state the basis for his knowledge of the applicant's membership period or how and when he first met the applicant. Lacking sufficient details, this declaration provides minimal probative value in support of the applicant's claim.
9. The record contains a declaration, dated March 18, 2003, from [REDACTED] Pastor at Resurrection Catholic Church. [REDACTED] stated that the applicant previously resided at [REDACTED] in Chicago and has been attending Sunday masses since 1982 to the present. However, upon verification, it was indicated that the applicant and his family had only been members since April 30, 2002. This discrepancy seriously detracts from the credibility of the declarant, as well as the applicant's claim.
10. The applicant submitted an affidavit, dated May 29, 2003, from [REDACTED] Secretary of the Hispanic Soccer League, who stated that the applicant has been a

member of the League since 1983 as a player in the youth division with the Halcones team, and continued with the same team until the second division in the year 1990. The affiant failed to state the applicant's place of residence during the membership period, to establish how he met the applicant or the source of his information or records. Lacking relevant details, this affidavit has minimal probative value.

For the reasons noted above, the documents submitted in support of the applicant's claim have been found to lack credibility or to have minimal probative value as evidence of the applicant's residence and presence in the United States for the requisite period. Although there are several affidavits, all of the affidavits in the record that refer to the relevant years are bereft of sufficient detail to be found credible or probative; not one affiant indicates credible personal knowledge of the applicant's entry into the United States in 1981 or credibly attests to his presence in the United States from his 1981 entry to 1988. In one case the affiant provided inconsistent and contradictory information regarding the applicant's claimed dates of residence.

The AAO finds that, upon an 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 applicant has not shown by a preponderance of the evidence that he resided in the United States for the requisite period.

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 lack of credible supporting documentation and inconsistency noted in the record, 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 from such date through May 4, 1988, 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.