



U.S. Citizenship  
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FILE:



MSC 02 229 60248

Office: LOS ANGELES

Date: MAR 22 2007

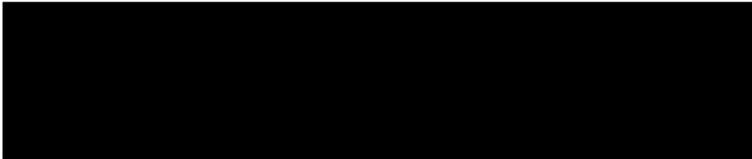
IN RE:

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. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in dark ink, appearing to read "Robert P. Wiemann".

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 on appeal. The appeal will be sustained.

The district director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, counsel argues that the applicant was denied due process as his stepfather was not allowed to testify at his interview. Counsel asserts that the affidavits from the applicant's mother and stepfather should be considered as their declarations are relevant to whether the applicant has the requisite presence for his LIFE application. Counsel provides declarations from the applicant and his mother in support of the appeal.

An applicant for permanent resident status 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. 8 C.F.R. § 245a.11(b).

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).

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence throughout the application process:

- An affidavit notarized March 24, 1990 from [REDACTED] of Rosemead, California, who attested to the applicant's residence in Rosemead since December 1981. [REDACTED] asserted that she met the

applicant at the time he was employed with her husband and has remained in contact with the applicant since that time.

- A letter dated March 12, 1990 from [REDACTED] president of Suprastone, Inc., in Montclair, California, who indicated that the applicant was in his employ since June 1986.
- A letter dated January 22, 1990 from [REDACTED] general partner of Ceco Clutch Exchange Co., in Rosemead, California, who indicated that the applicant was in his employ from August 1985 to March 1986.
- A 1985 and 1986 wage and tax statement from Ceco Clutch Exchange Co.
- A letter dated February 9, 1990 from [REDACTED] supervisor of American Magnesite Company in Bell Gardens, California, who indicated that the applicant was employed as a welder from December 1981 to August 1985.
- A California identification card issued on August 27, 1985, and a driver license issued on May 6, 1987, which listed that applicant's address as [REDACTED], Rosemead.
- A money market passbook issued on April 14, 1986.
- Several earnings statements issued during April 8, 1986 through February 25, 1987.
- Medical identification cards for Los Angeles County-USC Medical Center issued on August 25, 1987 and September 22, 1987.
- A Form 1099G-UC, Unemployment Compensation Payments for 1987 issued by the California Employment Development Department in Sacramento.
- A 1987 wage and tax statement from Applied Systems Waterproofing.
- An earnings record information from the Social Security Administration, which reflected the applicant's earnings in 1986 and 1987.

The applicant provided medical documentation relating to his mother's admission on December 10, 1981 at Huntington Memorial Hospital for surgery due to a brain tumor along with copies of her prescriptions.

The applicant also provided a court disposition in [REDACTED] which indicated that on September 20, 1986 the applicant was arrested for carrying a loaded firearm in a public place, a violation of section 12031(a) PC and carrying a concealed weapon within a vehicle, a violation of section 12025(a)(1) PC. On October 23, 1986, the applicant was convicted of carrying a loaded firearm in a public place, a misdemeanor. The remaining offense was dismissed. This single conviction does not render the applicant ineligible for the benefit being sought.

The director issued a Notice of Intent to Deny dated November 8, 2004, which advised the applicant that the employment letter did not meet the regulatory requirements and that affidavits did not contain sufficient

information and were not accompanied by corroborative documentation. The applicant was also advised that his mother's medical documentation could not be used as evidence of his presence in the United States.

Counsel, in response, asserted that applicant presented his mother's medical documentation to support his stepfather's statement that the applicant entered the United States prior to January 1, 1982 "for the very purpose of being near his mother during the time she was hospitalized and to take care of her." Counsel argued that at the time of the applicant's interview, his stepfather was present and prepared to testify; however, the interview officer declined to hear his testimony. Counsel claimed that the officer's refusal to hear the stepfather's testimony implied that the applicant had submitted sufficient evidence with regard to his continuous physical presence. Counsel contended, "[b]y not allowing [the stepfather] to testify [the applicant] has been prejudiced because he was not permitted to present evidence. Counsel submitted a declaration from the applicant's stepfather, [REDACTED], who attested to the applicant's entry into the United States during the first week of December 1981. Mr. [REDACTED] asserted that the applicant came to United States because his mother was going to have surgery to remove a brain tumor on December 10, 1981. [REDACTED] asserted that since his arrival in the United States, the applicant has resided with him and his mother at [REDACTED] in Los Angeles and subsequently in Rosemead.

Although the applicant did not list the residence at [REDACTED] in Los Angeles on his Form I-687 application, his mother's hospital discharge sheet dated December 25, 1981 listed the address at [REDACTED] Rosemead. The applicant claimed, on his Form I-687 application, to have resided at said address since December 23, 1981.

In this instance, the applicant submitted evidence, including contemporaneous documents, which tends to corroborate his claim of residence in the United States during the requisite period. Although the employment letters did not meet all the regulatory requirements, there is no evidence to suggest that the director attempted to contact any of the employers to verify the authenticity of the employment documents submitted. Regarding the affidavits provided, pursuant to *Matter of E--M--*, *supra*, affidavits in certain cases can effectively meet the preponderance of evidence standard, and the director cannot simply refuse to consider such evidence merely because it is unaccompanied by other forms of documents. The district director has not established that the information in this evidence was inconsistent with the claims made on the application, or that it was false information. As stated in *Matter of E--M--*, *supra*, when something is to be established by a preponderance of evidence, the applicant only has to establish that the asserted claim is probably true. That decision also points out that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. The documents that have been furnished may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

The documentation provided by the applicant supports by a preponderance of the evidence that the applicant satisfies the statutory and regulatory criteria of entry into the United States before January 1, 1982, as well as continuous unlawful residence in the country during the ensuing time frame of January 1, 1982 through May 4, 1988, as required for eligibility for legalization under section 1104(c)(2)(B)(i) of the LIFE Act.

Accordingly, the applicant's appeal will be sustained. The district director shall continue the adjudication of the application for permanent resident status.

**ORDER:** The appeal is sustained.