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FILE:

MSC 03 248 64517

Office: NEWARK

Date:

FEB 20 2008

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. 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, Newark, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The director denied the application because the applicant failed to establish that he entered the United States before January 1, 1982, and that he resided continuously in the United States in an unlawful status since that date through May 4, 1988. The director also determined that there was not sufficient evidence to establish that the applicant and [REDACTED] are one in the same person.

On appeal, applicant asserts that he provided sufficient evidence to establish his entry before January 1, 1982, and continuous residence in an unlawful status through May 4, 1988. In addition, applicant contends that he submitted sufficient evidence to establish that [REDACTED] and [REDACTED] are one in the same person.

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 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 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 cases where an applicant claims to have met any of the eligibility criteria under an assumed name, the applicant has the burden of proving that the applicant was in fact the person who used that name. The applicant's true identity is established pursuant to the requirements of paragraph (b)(4)(1) and (ii) of this section. The assumed name must appear in the documentation provided by the applicant to establish eligibility. To meet the requirement of this paragraph, documentation must be submitted to prove the common identity, i.e., that the assumed name was in fact used by the applicant. 8 C.F.R. § 245a.4(b)(4)(iii).

The issue in this proceeding is whether the applicant has established that he entered the United States prior to January 1, 1982, and has continuously resided in the United States in an unlawful status since such date through May 4, 1988.

In order to establish his claim, the applicant asserts that he assumed the alias, [REDACTED] during the statutory period. In the NOID, the director stated that the applicant failed to conclusively prove that the applicant and [REDACTED] are one in the same person. The applicant submitted the following evidence in support of his claim.

1. An August 17, 2005, sworn and subscribed affidavit by [REDACTED] who stated that she met the applicant, aka [REDACTED] in 1982 at Plums Restaurant in Torrance, California. She recently relocated to New Jersey and the applicant helped her get a job at the Cherry Hill Coach Diner. She provided a copy of her certification of birth.
2. A January 1, 1995, subscribed and sworn affidavit by [REDACTED] of Plums Restaurant in Torrance, California. The affiant stated she employed the applicant from 1981 to 1984. She stated that he left Plums because the restaurant closed. She provided the restaurant's address and telephone number.
3. An August 9, 2005, sworn affidavit by [REDACTED] who stated that he has known the applicant, [REDACTED], since 1982. The affiant stated that he met for the first time in Gardena, California, and their relationship started twenty-three years ago. The affiant provided his telephone number, address of residence, driver's license number, and naturalization certificate number.
4. An August 1, 2005, sworn and subscribed affidavit by [REDACTED] who stated that he has known the applicant since 1982. The affiant stated that they lived in the same

apartments, the applicant used the name of [REDACTED] for work, and they remain friends. The affiant provided his telephone number, address of residence, and naturalization number.

5. A July 28, 2005, sworn and subscribed affidavit of witness by [REDACTED], who stated that he has personally known the applicant, [REDACTED] has resided in Gardena, California from November 1982 to March 1997. The affiant stated that he met the applicant in November 1982 when the affiant was working for Fiesta Records. The affiant provided his address of residence and a copy of his certificate of naturalization.
6. A July 28, 2005, sworn and subscribed affidavit by [REDACTED], who stated that he has known [REDACTED] since 1982 until 1992. The affiant stated that they worked in the same place and were friends. The affiant provided his A-file number and address of residence.
7. Two envelopes sent to Mexico with the applicant's return address, date-stamped August 29, 1983.
8. A 1983 Form 1040A Individual Tax Return in the name of [REDACTED]
9. An Illinois Department of Law Enforcement, Firearm Owner's Identification in the applicant's name, which expires on June 1, 1985.
10. A California Driver's License in the name of [REDACTED] issued on October 21, 1983.
11. A Uniform Accessory Receipt signed by employee [REDACTED], dated July 22, 1985.
12. Two GEMCO Life Membership cards in the name [REDACTED] dated January 13, 1984.
13. An August 1, 2005, subscribed and sworn affidavit by [REDACTED] who stated that to his personal knowledge the applicant, [REDACTED] has resided in the United States from July 1982 to the present. The affiant stated that he met the applicant at work. The longest period during the residence described in which he has not seen the applicant is a couple of days. The affiant provided his address of residence.
14. An August 26, 1995, subscribed and sworn affidavit by [REDACTED] who stated that he has known the applicant from 1967 until the present. The affiant stated that they met in the neighborhood that we grew up in Guanajuato, Mexico. The affiant stated that the applicant used the assumed name [REDACTED]. The affiant came to know his use of this assumed name while the applicant worked and identified himself under the assumed name of [REDACTED]. The affiant attached a photograph of the applicant verifying that it was the same person known to have used the above stated assumed name. The affiant provided his address of residence in Gardena, California.

15. An October 27, 1993, subscribed and sworn affidavit of witness by [REDACTED] who stated that he has personal knowledge that the applicant has resided in the United States from July 1982 to the present. The affiant stated that he met the applicant in 1982 and became good friends. They used to live together in the same apartment. The affiant provided his address of residence.
16. An October 27, 1993, affidavit by [REDACTED], who stated that he has personal knowledge that the applicant has resided in the United States from July 1982 to the present. The affiant stated that he met the applicant in 1982, became good friends and see each other every week. The affiant provided his address of residence.

In the Notice of Intent to Deny (NOID), dated May 26, 2005, the director stated that the applicant claimed to use the alias [REDACTED]. The director determined that the applicant failed to conclusively prove that the applicant, [REDACTED] and [REDACTED] are one in the same person. The director also stated that the submitted affidavits of witnesses were not supporting evidence of identity, occupation or employment confirming the information provided by the affiants. The director granted the applicant fifteen (15) days to submit additional evidence to overcome the stated reasons for denial.

In response to the NOID, counsel submitted affidavits by witnesses attesting that the applicant an Daniel Alvarez are the same person, proof that the applicant was in the United States prior to January 1, 1981, proof the applicant was using the alias during the requisite period, and previously submitted affidavits.

In the Notice of Decision (NOD), dated September 2, 2005, the director determined that new evidence failed to overcome the reasons stated in the NOID. The director denied the instant application and determined that the applicant was ineligible for adjustment of status under LIFE Legalization.

On appeal, the applicant asserts that the director erred in denying this case. Applicant contends that there was sufficient evidence to establish and conclusively prove that [REDACTED] and [REDACTED] are the same person.

Pursuant to 8 C.F.R. § 245a.4(b)(4)(iii), the record includes a California driver's license in the name of [REDACTED], issued on October 21, 1983. The driver's license contains a photograph of the applicant under the assumed name. While they do not include photographs of the applicant, the record also includes a 1983 tax return, a firearm owner's identification card, an employee receipt, and two membership cards under the assumed name.

The record includes seven affidavits, all of which indicate that the applicant used the assumed name of [REDACTED]. The affidavits state the affiants' names. The affidavits also identify the affiants' relationship with the applicant and the affiants' basis for their knowledge with varying degrees of detail.

The record also contains a Form I-213, Record of Deportable Alien, dated September 8, 1980, which indicates that the applicant attempted entry into the United States by claiming to be a citizen and presenting an Illinois birth certificate in the name of [REDACTED]. The applicant was placed in the Val Verde County Jail in Del Rio, Texas. The record also indicates that exclusion proceedings were initiated against the applicant. The United States Immigration Court in San Antonio, Texas, scheduled two hearings for November 21, 1980, and July 17, 1981. However, the applicant did not appear at either hearing and the case was administrative closed on July 30, 1981. Based on the above documentation, it is clear that the applicant not only used the assumed name but also that he entered the United States before January 1, 1982.

The applicant must also establish that he continuously resided in the United States in an unlawful status since January 1, 1982, through May 4, 1988. The record contains a Form I-687, Application for Temporary Resident Status, signed by the applicant on October 25, 1993. The applicant listed his address of residence as 14909 Crenshaw, Gardena, California from July 1982 to September 1985. The applicant's GEMCO cards, tax Form 1040A, and California driver's license also list the same address during the same time period from 1983 through 1984. In his Form I-687, the applicant also stated that he was employed as a cook for Denny's Restaurant from July 1984 to 1993. The applicant submitted a 1985 Uniform Accessory receipt for two cook hats, a cook scarf and a cook scarf ring, which corroborates the applicant's statement in his Form I-687. The above evidence tends to demonstrate the applicant's residence in the United States from before 1982 through 1985.

In support of his continuous residence from 1986 through May 4, 1988, the applicant submitted three affidavits by [REDACTED] and [REDACTED]. All of the affiants stated that the applicant resided in the United States since 1982. All of the affiants provided verification of their identity. [REDACTED] and [REDACTED] provided their telephone numbers, addresses of residence, and naturalization numbers.

The applicant also submitted five affidavits by [REDACTED] and [REDACTED]. All of the affiants indicated that the applicant resided in the United States since 1982 through 1988 and beyond. All of the affiants provided their addresses of residence, but only two affiants provided verification of their identity.

The record also contains a second Form I-213, dated February 21, 2002. The applicant was encountered at the residence of another Mexican national, who was arrested. The Immigration officers asked the applicant's identification and he provided them with a New Jersey State identification card in the name of [REDACTED]. In a sworn February 21, 2002, affidavit, which was unrelated to the instant application, the applicant stated that he had last entered the United States on June 20, 2001, and before that date on July 6, 1987. The applicant was removed from the United States to Mexico on February 26, 2002. The applicant's affidavit corroborates the statements on his Form I-687. In response to question #35, when asked to list his absences from the United States since entry, the applicant stated that he went to visit his family in Mexico from June 10, 1987, to July 6, 1987. Also, the affidavit by [REDACTED] supports the applicant's absence in 1987.

While none of the above affiants provided any contemporaneous evidence of the applicant's residence in the United States during the requisite period, their affidavits corroborate the applicant's claim. Based on the preponderance of the evidence standard, the totality of the evidence tends to demonstrate that the applicant's claim is probably true. The submitted documentation and numerous affidavits support the applicant's claim that he resided in the United States for the duration of the requisite period. Therefore, the applicant has met his burden. The applicant has established continuous unlawful residence in the United States from before January 1, 1982, through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. Consequently, the applicant has overcome the basis for denial cited by the director. Accordingly, the AAO will withdraw the director's decision dated September 2, 2005. The director shall continue the adjudication of the application for permanent resident status under section 1104 of the LIFE Act.

It is noted that the applicant is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182 (a)(9)(A)(ii), but a waiver is available. The applicant must file a Form I-690, Application for Waiver of Grounds of Inadmissibility, with the National Benefits Center.

ORDER: The appeal is sustained. The director shall continue the adjudication of the application for permanent residence.