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

PUBLIC COPY

[redacted]

FILE: [redacted] Office: NEW YORK Date: MAY 23 2006

MSC 02 264 60253

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, New York, New York, 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.

On appeal, counsel for the applicant submits a brief statement and additional documentation.

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 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 petitioner 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 petitioner 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 or petition.

The regulations at 8 C.F.R. § 245a.2(d)(3) provide an illustrative list of contemporaneous documents that an applicant may submit as evidence in support of his or her application.

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.

While affidavits may be accepted as "other relevant documentation" in support of the applicant's claim, the regulations do not suggest that such evidence alone is necessarily sufficient to establish the applicant's unlawful continuous residence during the requisite time period. *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 documentation:

1. An affidavit, dated May 7, 1992, from [redacted] he applicant's cousin, stating that the applicant had resided in the United States since March 1981;
2. A letter, dated January 19, 1992, from [redacted] Resident Manager of Bedford Court, Silver Spring, Maryland, stating that the applicant had been employed as a porter from May 1981 to July 1987;
3. A letter, dated March 7, 1992, from [redacted] Assistant Manager of Sovran Bank, Alexandria, Virginia, stating that the applicant had been employed as a porter since November 1987; and,
4. An undated letter from stating that he drove the applicant to Canada on August 6, 1987, and that when the arrived at the port of entry at Buffalo, New York, they were allowed to pass without inspection.

In a Notice of Intent to Deny (NOID), dated October 5, 2005, the district director determined that the applicant had failed to prove by a preponderance of the evidence that he had continuously resided in the United States in unlawful status from prior to January 1, 1982, through May 4, 1988. The applicant was provided 30 days in which to submit additional evidence that he wished to have considered in making a decision in his case. In response, counsel for the applicant submitted:

5. An affidavit, dated November 3, 2005, from the applicant, stating that [redacted] (the affiant in No. 1, above) had left the United States shortly after he executed the affidavit, and that he (the applicant) did not have any other documentary evidence other than what had previously been provided; and,
6. Photographs of the applicant, allegedly taken of him in Alexandria, Virginia, from April 20, 1984, to December 25, 1986.

In a Notice of Decision (NOD), dated February 7, 2006, the district director denied the application based on the reasons stated in the NOID.

On appeal, counsel for the applicant states that the applicant has obtained credible evidence that will overcome the director's decision. In support of the appeal, counsel submits the following additional documentation:

7. An affidavit from stating that he had visited the applicant at various addresses in New York and Virginia since 1981. The affidavit is undated and the date of notarization - March 2nd - does not note the year;
8. An affidavit, notarized on March 1, 2006, from [redacted], stating that he had visited the applicant at various addresses in New York and Virginia since 1981; and,
9. An affidavit, notarized on March 2, 2006, from [redacted], stating that he had visited the applicant at various addresses in New York and Virginia since 1981.

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

Although the applicant has submitted affidavits in support of his application, he has not provided any contemporaneous documents provided for in 8 C.F.R. § 245a.2(d)(3) as evidence of his residence in the United States during the requisite time period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality.

While not required, the affidavit and letter provided in Nos. 1 and 4, above, are not accompanied by proof of identification or any evidence that the persons making the statements actually resided in the United States during the relevant period. They also lack details that would lend credibility to the claimed relationships with the applicant and are not supported by any corroborative evidence. As such, the statements can be afforded minimal weight as evidence of the applicant's residence and presence in the United States for the requisite period. Similarly, the employment letters, Nos. 2 and 3, fail to meet the regulatory requirements, identified above, set forth under 8 C.F.R. § 245a.2(d)(3)(i). As such, they also carry little evidentiary weight. The applicant's statement and photographs provided in response to the NOID (Nos. 5 and 6, above) do not provide tangible and credible proof of his residence and physical presence prior to January 1, 1982. Furthermore, although the affidavits provided in Nos. 7 through 9, are accompanied by evidence of the affiants' identities, the absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period 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 with 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.

The regulation at 8 C.F.R. § 245a.12(e) provides that "[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods." Preponderance of the evidence is defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5th ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

Given the insufficiency in the evidence, the AAO determines that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982, and resided in this country in an unlawful status continuously since that time through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). 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.