U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEW YORK Date: MAY 0 5 2009
MSC-02-274-61898

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.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the director, New York. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application based on the determination that the applicant was ineligible to adjust to permanent resident status under the provisions of the LIFE Act because the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. Specifically, the director noted that the applicant stated under oath that he initially entered the United States in 1986, consistent with the information contained in the Biographic Information (Form G-325A). Thus, the director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible for permanent resident status pursuant to the terms of the LIFE Act. *Section 1104(c)(2)(D)(ii) of the LIFE Act.*

The applicant is represented by counsel on appeal. Counsel argues that the director failed to give proper weight to the evidence of the applicant's medical condition. In a brief submitted in support of the appeal, counsel claims that the applicant suffered a serious accident which adversely affected his memory and his ability to recall important dates associated with his entry and residence in the United States. Counsel asserts that the applicant's Form I-485 was not prepared properly due to the ineffectiveness of prior counsel, and that the applicant's limited facility with English prevented him from filling out the forms accurately and participating in his interview in a meaningful fashion. Counsel argues that "exceptional circumstances" warrant a discretionary grant of permanent residence.

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).

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.

In a Notice of Intent to Deny (NOID) the director stated that the applicant failed to submit evidence demonstrating his continuous unlawful residence in the United States from prior to January 1, 1982, through December 31, 1987. The director noted that the applicant failed to submit evidence of his initial entry into the United States on October 21, 1981 as claimed, and that the submitted affidavits were insufficient and were not amenable to verification. The applicant submitted additional evidence in response.

The director issued a second NOID notifying the applicant that his testimony at the interview on April 6, 2004 and the Form G-325A established that the applicant entered the United States for the first time in 1986. In response, counsel submitted a sworn statement from the applicant and medical records. The applicant claimed mistakes due to his inadequate knowledge of English and memory loss at the time of the interview, and requested a second interview to address discrepancies in the evidence.

The director denied the application, finding that the applicant's testimony at his interview was consistent with the evidence submitted prior to his head injury, and that the evidence of record established the applicant's initial entry into the United States in January, 1986.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status before January 1, 1982, through December 31, 1987. The applicant submitted affidavits from three individuals, [redacted] and [redacted] Mr. [redacted] states where the applicant was employed from March 1986 to the present, and does not establish the applicant's residence in the United States since before January 1, 1982. [redacted], who submits two affidavits, and [redacted] both state that the applicant continuously resided in Brooklyn from 1981-1989.

These affidavits fail to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.

None of the witness statements provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

The AAO has reviewed the medical records submitted by the applicant to substantiate his medical condition. The evidence establishes that the applicant suffered a head concussion prior to the April 6, 2004 interview; however, the statement of [redacted] the physician who treated the applicant for the concussion, does not establish a factual foundation for his statement that the applicant suffered memory problems for two months following the concussion. [redacted] states that he treated the applicant for a concussion on March 27, 2004, and does not indicate that he continued to treat the applicant for the next two months. He does not state how he reached his conclusion that the applicant suffered memory loss for two months following the accident. On appeal, the applicant has not submitted any new evidence that the applicant's injury caused memory loss and confusion at the time of the interview. The AAO finds that the director correctly denied the Form I-485 without providing the applicant a second interview.

The Form I-485 and accompanying documents were signed and submitted well in advance of the applicant's initial accident, and his claim of memory loss is not relevant to these documents. Although counsel claims that the applicant did not understand the English language when he completed the application, the applicant signed the Form G-325A under penalty of perjury. The application does not indicate that the applicant was assisted by anyone in its preparation; therefore the claim that prior counsel was ineffective is not persuasive. Further, the applicant signed an Application for Alien Employment Certification, Statement of Alien Qualifications (Form ETA 750B) on December 12, 1997 in support of a separate application for residence in the United States, in which he stated under penalty of perjury that he worked in Poland as a carpenter from January, 1980 through January, 1986.

A review of the decision reveals that the director correctly determined that the applicant had not established by a preponderance of probative, credible evidence that he entered the United States prior to January 1, 1982 and continuously resided here in an unlawful status for the requisite period.

An alien applying for adjustment of status under the provisions of section 1140 of the LIFE Act has the burden of proving by a preponderance of evidence that he or she has continuously resided in an unlawful status in the United States from January 1, 1982 to May 4, 1988, is admissible to the United States under the provisions of section 212(a) of the INA, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.11. The applicant has failed to meet this burden.

The AAO notes that the applicant has two misdemeanor convictions for operating a vehicle under the influence of alcohol. The two misdemeanor convictions do not render the applicant inadmissible to the United States.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.