identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

42

[redacted]

FILE: [redacted] Office: GARDEN CITY Date: MAY 06 2009
consolidated herein]
MSC 02 061 60936

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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 in Garden City, New York. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that she entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal the applicant asserts that he has provided sufficient credible evidence to establish that he entered the United States before January 1, 1982 and resided continuously in the country during the requisite period for legalization under the LIFE Act.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. *See* section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

"Continuous unlawful residence" is defined at 8 C.F.R. § 245a.15(c)(1), as follows: "An alien shall be regarded as having resided continuously in the United States if *no single absence* from the United States has *exceeded forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed." (Emphases added.)

"Continuous physical presence" is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: "An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of *brief, casual, and innocent absences* from the United States." (Emphasis added.) The regulation further explains that "[b]rief, casual, and innocent absence(s) as used in this paragraph means *temporary, occasional trips abroad* as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States." (Emphasis added.) 8 C.F.R. § 245a.16(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 its amenability to verification. *See* 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).

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.

The applicant, a native of Paraguay who claims to have lived in the United States since July 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on November 30, 2001.

In a Notice of Intent to Deny (NOID) dated November 6, 2007, the director indicated that the applicant had not submitted sufficient credible evidence to establish that he entered the United States before January 1, 1982 and resided continuously in the country through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

In response, the applicant submitted originals of documentation previously submitted in the record. On March 11, 2008, the director issued a Notice of Decision denying the application. The director indicated that the information and documentation submitted in response to the NOID were insufficient to overcome the grounds for denial.

On appeal the applicant asserts that he has provided sufficient credible evidence to establish that he entered the United States before January 1, 1982 and resided continuously in the country during the requisite period for legalization under the LIFE Act. The applicant submitted no additional documentation with the appeal.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that he has not.

The documentation that the applicant submits in support of his claim to have entered the United States before January 1982 and resided continuously in the country in an unlawful status during the period required for legalization under the LIFE Act consists of the following:

- A notarized letter of employment from dated November 5, 1991, stating that the applicant was employed "in construction and painting at several jobs" from August 1981 to September 1984, and was paid $14,560.00 a year.
- A letter of employment from [redacted] president Turbo Taping Company in Woodside, New York, dated November 6, 1991, stating that the applicant was employed from October 1984 to the present (1991) as a "taper" in construction, that at the beginning he earned $6.00 per hour, which was increased to $12.00 per hour by 1986.
- Two letters from Church of St. Bartholomew in Elmhurst, New York, dated May 28, 1991 and September 20, 2007, stating that the applicant had been a member of the Parish and attended religious services since 1981.
- A series of affidavits – dated in 1991 and 2007 – from acquaintances who claim to have rented an apartment to, or otherwise known the applicant resided in the United States during the 1980s.
- Various retail and merchandise receipts with hand written notations of the applicant's name, and sometimes a United States address, dated in the 1980s.
- Various envelopes addressed to the applicant at [redacted] Corona, New York, from individuals in Paraguay, with foreign postmarks that appear to have been altered by hand.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision.

The letters of employment from [redacted], do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because they did not identify the applicant's address during the times of employment, did not indicate whether the information about the applicant's employment was taken from company records, and did not indicate whether

such records are available for review. The letters are not supplemented by earnings statements, pay stubs, tax records or other documentation demonstrating that the applicant was employed during any of the years claimed. For the reasons discussed above, the AAO determines that the letters of employment have limited probative value. They are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The letters from [redacted] and [redacted] of St. Bartholomew's Church in Elmhurst, New York, do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(v), which specifies that attestations by religious and related organizations (A) identify the applicant by name, (B) be signed by an official (whose title is shown), (C) show inclusive dates of membership, (D) state the address where the applicant resided during the membership period, (E) include the organization seal impressed on the letter or the letterhead of the organization, (F) establish how the author knows the applicant, and (G) establish the origin of the information about the applicant. Both Reverends did not state where the applicant lived at any point in time between 1981 and 1988, did not indicate how and when they met the applicant, and did not state whether their information about the applicant was based on the their personal knowledge, church records, or hearsay. Since the letters did not comply with sub-parts (C), (D), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), the AAO concludes that they have little probative value. The letters are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The affidavits in the record from individuals who claim to have known the applicant resided in the United States during the 1980s, contain minimalist or fill-in-the-blank formats. Considering the length of time they claim to have known the applicant – in most cases since 1981 – the affiants provide remarkably few details about the applicant's life in he United States or their interactions with him over the years. Nor are the affidavits accompanied by any documentary evidence – such as photographs, letters, and the like – of the affiants' personal relationships with the applicant in the United States during the 1980s. In view of the substantive deficiencies, the affidavits have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The various retail receipts, bearing dates from 1981 to 1987, are all handwritten with no stamps or other official markings to authenticate the dates they were written. Some of the receipts do not identify the applicant's complete name and address. The receipt dated November 30, 1986, identified the applicant's address as '[redacted] – which conflicts with the information provided by the applicant on her Form I-687, dated November 9, 1991, which identified the applicant's address during 1986 as [redacted]. Thus the receipts do not appear to be genuine and are therefore not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The envelopes addressed to the applicant at [redacted], bear foreign postmark dates that appear to read in 1981 to 1983, do not bear any U.S. postmarks to

verify that the envelopes were actually processed and delivered to the applicant at the address in the United States. Thus, the envelopes have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States during the years 1981 to 1983, much less in subsequent years through May 4, 1988.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A). Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

The appeal will be dismissed, and the application denied.

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