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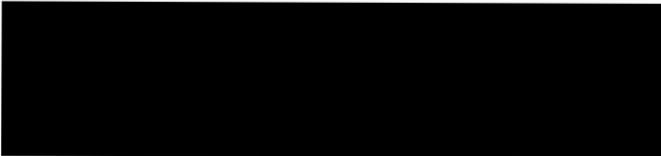
U.S. Department of Homeland Security
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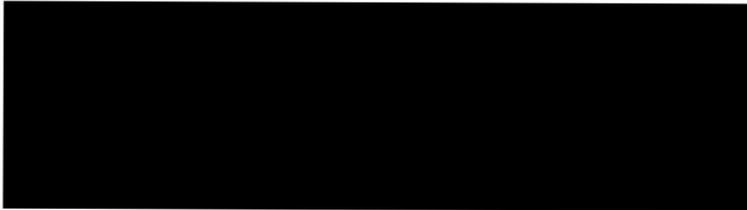


FILE: [REDACTED] Office: CHICAGO Date: APR 22 2008
MSC 02 064 61413

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:



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.

A handwritten signature in black ink, appearing to read "R. 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, Chicago, Illinois, 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 submits a brief asserting that the applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel provides additional evidence along with copies of previously submitted documents 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:

- Notarized affidavits from acquaintances [REDACTED] and [REDACTED] of Chicago, Illinois and [REDACTED] of Alsip, Illinois, who attested to the applicant's residence in the United States since 1981.
- Notarized affidavit from an acquaintances [REDACTED] of Chicago, Illinois, and Julieta Molotla who attested to the applicant's residence in the United States since 1983 and 1984, respectively.
- A notarized affidavit from a former girlfriend, [REDACTED] of Chicago, Illinois, who indicated that she and the applicant dated from the latter part of 1981 until 1983. The affiant asserted that she remained friends with the applicant and from 1986 to 1989 she was a co-worker of the applicant at Assist, Inc.
- Notarized affidavits from [REDACTED], now [REDACTED] of Berwyn, Illinois, who indicated that she has known the applicant since 1981 and attested to the applicant's residence in the United States since that time. The affiant asserted that she and the applicant had the same group of friends and often went dancing on the weekends, and she was a co-worker of the applicant from 1986 to 1987 at Assist, Inc.
- Notarized affidavits from [REDACTED] of Las Vegas, Nevada, who indicated that he has known the applicant since 1985 and attested to the applicant's residence in the United States since that time. The affiant asserted that he worked at Montgomery Wards from 1985 to 1998 and he was the applicant's immediate supervisor. The affiant asserted that the applicant was initially a temporary laborer through Assist, Inc.
- Notarized affidavits from [REDACTED] of Chicago, Illinois, who attested to the applicant's Chicago residence at [REDACTED] from December 1, 1981, through November 1, 1989. The affiant asserted that she was the manager of the building where the applicant resided and saw the applicant at least once a week.
- A notarized affidavit from [REDACTED], president and publisher of El Heraldo Publications, who indicated that the applicant was in his employ as a delivery person from January 1981 to December 1985.
- A notarized affidavit from [REDACTED] manager of Doris Upholstery in Chicago, Illinois, who indicated that the applicant was employed from March 1981 to December 1985.
- Wage and tax statements for 1985 and 1988 from Add A Man, Inc., in Chicago, Illinois.
- Letters dated March 3, 1990, and June 18, 2003, from [REDACTED], manager of Assist, Inc., in Chicago, Illinois, who attested to the applicant's employment from December 21, 1985, through February 27, 1990. The applicant's driver licenses were photocopied onto each letter.
- An Illinois drivers license issued on June 16, 1987.
- Notarized affidavits from [REDACTED] of Chicago, Illinois, who indicated that in 1981, she employed the applicant to repair some of her furniture pieces. The affiant asserted that on several occasions the applicant had repaired other furniture pieces. The affiant asserted that she has remained friends with the applicant since that time and attested to the applicant's continuous residence in the United States since 1981.
- An envelope postmarked in August 1986 addressed to the applicant.
- A financial profile from Bank of Ravenswood in Chicago, Illinois, for December 30, 1985, to December 31, 1985, and a money order receipt issued on October 10, 1986.
- A PS Form 3806, Receipt for Registered Mail, postmarked in October 1986.

The applicant also submitted copies of telephone statements from Illinois Bell; however, as the applicant's name is not listed on the statement, they cannot be considered in these proceedings.

In his Notice of Intent to Deny issued on August 19, 2005, the director advised the applicant that the documents submitted did not meet the requirements as proof of continuous residence in unlawful status in the United States prior to January 1, 1982, through May 4, 1988. The director noted that the affidavits and other documentation had been taken into consideration; however, it was determined that the applicant had not established by a preponderance of evidence that he met the requirements to adjust his status under the LIFE Act.

However, 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.

On appeal, counsel provides an affidavit from the applicant, who indicated that he first resided with family members in Chicago, Illinois from 1980 to December 1981 at [REDACTED] and continued to utilize this address as his mailing address throughout the requisite period. The applicant indicated he: 1) resided at [REDACTED] from December 1981 to November 1989; 2) was employed part-time at El Heraldo and Doris Upholstery from 1981 to 1985 and received his wages in cash; 3) worked full-time at Montgomery Wards through Assist Inc., a temporary work agency, from December 1985 to December 1990, but did not keep his check stubs; and 4) opened a bank account at Bank of Ravenswood, now doing business as Bank One and that Bank One has informed him that they only maintain record for seven years.

The statements of counsel on appeal regarding the amount and sufficiency of the applicant's evidence of residence have been considered. 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. The applicant provided affidavits from individuals, all whom provide their current addresses and/or telephone numbers and indicate a willingness to testify in this matter. The record contains no evidence to suggest that the district director attempted to contact any of the former employers to verify the authenticity of the employment documents submitted. The district director has not established that the information in these affidavits was inconsistent with the claims made on the application, or that such information was false. 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 proof 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.