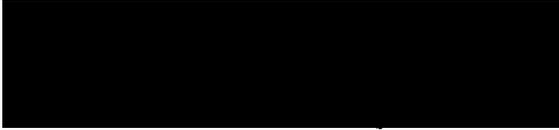


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Services

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FILE:



Office: DALLAS

Date:

AUG 09 2006

MSC 02 243 62654

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. All documents have been returned to the office that originally decided your case. 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.

A handwritten signature in black ink, appearing to read "R. Wemmann".

Robert P. Wemmann, 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, Dallas, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The district director determined that the applicant had not provided evidence to adequately establish that he resided in the United States in a continuous, unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel asserts that the applicant has provided sufficient and credible evidence to establish continuous, unlawful residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel resubmits documents that attest to the applicant's residency in the United States during the statutory period.

An applicant for permanent resident status under the LIFE Act 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 through May 4, 1988. See § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b).

An individual who applies 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.* at 80. 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 either to request additional evidence, or if that doubt leads the director to believe that the claim is probably not true, to deny the application or petition.

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).

Here, the submitted evidence is relevant, credible and probative.

On or about September 1, 1990, the applicant applied for class membership in a legalization class-action lawsuit and filed Form I-687, Application for Status as a Temporary Resident. On May 31, 2002, the applicant filed Form I-485, Application to Register Permanent Residence or Adjust Status.

In support of his claim of residence in the United States since a date prior to January 1, 1982 through May 4, 1988, the applicant submitted:

- three employment letters on formal, letterhead stationary that attest to the applicant's employment in Texas throughout the statutory period; and
- notarized declarations from two previous landlords that attest to the applicant's continuous residence in Dallas, Texas throughout the statutory period;

The letters and affidavits submitted by the applicant include contact telephone numbers and contact addresses. The applicant's former employers each also gave the Service permission to inspect their respective employment records to further verify the applicant's employment with these companies.

On March 5, 2004, the director issued a Notice of Intent to Deny (NOID). The director stated that the applicant failed to submit adequate evidence of continuous, unlawful residence in the United States during the statutory period. The director indicated that she believed that the employment letters which the applicant submitted in support of his application were not authentic. However, the director did not identify what it was that she found lacking in these documents. The director did not indicate in the NOID whether she had analyzed other evidence in the record such as the notarized affidavits of former landlords which were submitted by the applicant in support of his application.

On May 8, 2004, the director denied the application for the reasons set out in the NOID.

On appeal, counsel explains that the applicant had submitted all the documentation of residency available to him. Counsel points out that two of the applicant's employment letters were issued by very well known restaurants in the Dallas metropolitan area. Counsel emphasizes that all of the applicant's employment letters are on formal letterhead stationary. Counsel asserts that the applicant has established by the preponderance of the evidence that he resided continuously in the United States during the statutory period.

The applicant provided an original, notarized affidavit of [REDACTED] that refers to [REDACTED] the applicant's former landlord and friend and that attests to the applicant's continuous residence in Dallas, Texas from November 1981 through June 1985. Almanza provided a contact telephone number

and contact address on this affidavit. The information on the affidavit is consistent with information that the applicant provided on the Form I-687 at Part #33.

The applicant also provided an original, notarized affidavit of [REDACTED] that refers to Mr. [REDACTED] the applicant's former landlord and that attests to the applicant's continuous residence in Dallas, Texas from June 1985 through September 1988. [REDACTED] provided a contact telephone number and contact address. The information on the affidavit is consistent with information that the applicant provided on the Form I-687 at Part #33.

These documents appear to be credible and amenable to verification.

The applicant provided an employment letter on formal letterhead stationary from Southern Kitchen - A Colonial Dinner House (Southern Kitchen) that attests to the applicant's employment as a dishwasher at this Dallas restaurant from December 18, 1981 through July 12, 1984. The restaurant's office manager offered the Service permission to review its employment records to verify this information, if it chose to do so. The information on this letter is consistent with information which the applicant provided on the Form I-687 at Part #36. Counsel acknowledges on appeal that Southern Kitchen had closed during the intervening decades since the applicant left that restaurant, but that for a long period it was a well known restaurant in Dallas.¹

The applicant also provided an employment letter on formal letterhead stationary from [REDACTED] that attests to the applicant's employment as a dishwasher at this Dallas restaurant from July 28, 1983 through May 14, 1986. The bookkeeper [REDACTED] offered the Service permission to review its employment records to verify this information, if it chose to do so. The information on this letter is consistent with information which the applicant provided on the Form I-687 at Part #36. Counsel acknowledges on appeal [REDACTED] closed but that for many years it was a well known restaurant in Dallas.²

Finally, the applicant provided an employment letter on formal letterhead stationary from [REDACTED] that attests to the applicant's employment at this Grand Prairie, Texas company from May 27, 1986 through July 20, 1988. An accounting supervisor at [REDACTED] offered the Service permission to review its employment records to verify this information, if it chose to do so. The information on this

¹ An Internet search indicates that Southern Kitchen was a well-established Dallas restaurant, popular in the 1970's and 1980's, which has since closed. See Dallas History Message Board postings at www.dallashistory.org/cgi-bin/webbbs_config.pl?noframes;read=33124 and www.dallashistory.org/cgi-bin/webbbs_config.pl?noframes;read=51133.

² An Internet search indicates that [REDACTED] did not actually close. The restaurant only moved from [REDACTED] Dallas, Texas location. It currently operates under the name Vincent's Seafood. This restaurant has been in business at various locations in metro-Dallas for over one-hundred years. See Dallas History Message Board postings at www.dallashistory.org/cgi-bin/webbbs_config.pl?noframes;read=30365 and [www.\[REDACTED\]](http://www.[REDACTED])

letter is consistent with information which the applicant provided on the Form I-687 at Part #36. An Internet search indicates that [REDACTED] continues to operate in Grand Prairie.³

These employment letters appear credible. No negative inference may be drawn from the fact that the information on these letters may prove difficult to verify as these businesses may have folded or re-located.

The district director has not established: that the information on the applicant's supporting documents was inconsistent with the claims made on the present application or previous applications filed with the Service; that any inconsistencies exist *within* the claims made on the supporting documents; or that the documents contain false information. As stated in *Matter of E-M-*, 20 I&N Dec. at 80, when something is to be established by a preponderance of the evidence, the proof submitted by the applicant has to establish only that the asserted claim is probably true. That decision also states that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. *Id.* at 79. 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 applicant provided evidence that establishes by a preponderance of the evidence that he entered the United States before January 1, 1982 and he maintained continuous, unlawful residence status from such date prior to January 1, 1982 through May 4, 1988, as required for eligibility for legalization under section 1104(c)(2)(B)(i) of the LIFE Act. Consequently, the applicant has overcome the particular basis of denial cited by the district director.

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.

³ VSL operates as a division of "Structural Group" and has moved from 1414 Post and Paddock to 1609 109th Street in Grand Prairie, Texas. See www.vsl.net/contact/vsl_contact.html or www.structural.net/contact_sg/locations_sg.html.