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U.S. Citizenship
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FILE:

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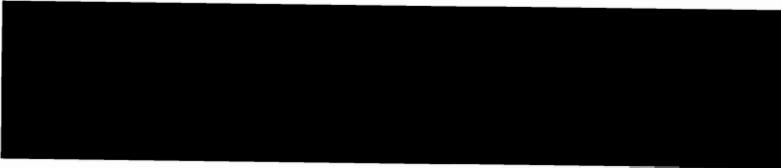
Applicant:



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. Any further inquiry must be made to that office.

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 on March 31, 2004. The applicant's subsequent appeal of that denial was untimely. The district director reopened the decision, presumably pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(2). On July 21, 2004, the director again denied the application. The applicant timely appealed the director's decision, and the matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988.

On appeal, counsel states that the applicant's documents clearly indicate that he is eligible to adjust his status to that of permanent resident under the LIFE Act. Counsel submits a brief and additional documentation in support of the appeal.

We note that the applicant filed a Form I-687, Application for Status as a Temporary Resident, on December 13, 2004, which was subsequently denied by the district director on September 27, 2005. The applicant's appeal of that decision on October 28, 2005 is not at issue in this decision and will not be addressed.

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. Section 1104(c)(2)(B) of the LIFE Act; 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 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.

Although Citizenship and Immigration Services (CIS) 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant states that he entered the United States without inspection in 1980 and that he was absent from the United States only once during the requisite period, from July 12 to August 14, 1987 to visit his sick mother in Bangladesh. The applicant stated that during the requisite period, he worked as a stockman at Asian Oriental F/S from November 1982 to June 1986, and as a cook at PB Pasta from September 1987 until the date of his first Form I-687 application, which he signed on April 19, 1990.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant submitted the following evidence:

1. A July 1, 1992 affidavit from [REDACTED] in which he stated that the applicant lived with him at his apartment from November 1980 until October 1985. The affiant stated that while the applicant contributed to household expenses, all of the receipts and bills were in the name of the affiant. The applicant submitted no evidence that he or the affiant lived at this address during the stated time frame.
2. An April 17, 1990 affidavit from [REDACTED] in which he stated that he is a friend of the applicant and that he has known him since November 1986. The affiant stated that the applicant has been a continuous resident of the United States since that time.
3. A September 16, 1994 sworn statement from [REDACTED] in which he stated that he met the applicant in New York City during the summer of 1981 while visiting a friend.
4. A July 20, 1990 statement from [REDACTED] in which she stated that she has managed the Francis J. Dewes Mansion in Chicago from "early 1986 to present," and that she has known the applicant "for a good part of that time." [REDACTED] statement is unclear whether or not she was acquainted with the applicant during any part of the requisite period or that he lived continuously in the United States during any part of that period.

The applicant also submitted copies of envelopes addressed to him in the United States. However, the canceled postmarks on the envelopes are either illegible or subsequent to May 4, 1988. Other documentation, including a lease agreement and letters of employment, is also after the qualifying period. Copies of cash register receipts dated in 1983 do not include a name or address and are therefore not probative in establishing the applicant's presence and continued residence in the United States.

In this instance, the applicant has submitted four affidavits or third-party statements that purport to attest to his residency in the U.S. during the period in question. While affidavits in certain cases can effectively meet the preponderance of evidence standard, the documentation submitted by the applicant does not contain sufficient verifiable information that would make it more likely than not that he resided continuously in the United States during the requisite period. The applicant submitted no contemporaneous documentation to establish his eligibility for adjustment of status under the LIFE Act.

Given the absence of any contemporaneous documentation and the minimum documentation from independent objective sources regarding the applicant's residency, it is concluded that the applicant has failed to establish continuous residence in the U.S. for the required period.

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