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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: LOS ANGELES Date: JUN 27 2006
MSC 01 338 60625

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. 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, Los Angeles, California, reopened, and subsequently denied again by said Director. The matter 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 asserts 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 documents in support of the appeal.

It is noted that the director, in denying the application, did not address the evidence furnished in response to the Notice of Intent to Deny, and did not set forth the specific reasons for the denial pursuant to 8 C.F.R. § 103.3(a)(1)(i). As such, the documentation submitted throughout the application process will be considered on 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:

- A 1982 and 1983 W-2 wage and tax statements from Road Runner Coffee Shop in Azusa, California and addressed to the applicant at [REDACTED]
- A Form K-4 and a Form H-6 from the California Department of Motor Vehicles (DMV) dated August 17, 1989 and April 29, 1990, respectively. Both forms indicated that the applicant had an identification card issued in his name on March 4, 1982 and a driver license issued on March 13, 1986. The Form K-4 listed the applicant's [REDACTED] address as of October 25, 1982 at [REDACTED] Apt. 4. The Form H-6 listed the applicant's Azusa address as of March 13, 1986 at [REDACTED]
- An interim driver license issued by the California DMV on March 13, 1986 for 90 days.
- Two money order receipts dated May 17, 1986 and July 8, 1986 and a dental receipt from the Azusa Family Dental Center dated December 28, 1982.
- An affidavit notarized September 28, 1990 from [REDACTED] of Azusa, California who indicated that he met the applicant in 1981 and attested to the applicant's address in Azusa since January 1981 and to his May 7, 1987 departure from the United States.
- A letter from [REDACTED] a foreman at [REDACTED] Ranch in Rancho Cucamonga, California, who indicated that the applicant was employed as a seasonal worker at [REDACTED] Ranch from November 1983 to January 1983 and during May 1985.

The applicant also submitted an employment letter from [REDACTED] and earnings statements issued in 1982 in the names of [REDACTED] and [REDACTED] respectively. These documents cannot be considered, as the applicant has provided no evidence from the employers establishing that he [REDACTED] and [REDACTED] are one and the same person. Likewise, the document from the Automobile Club of Southern California dated in 1985, and the receipts for registered mail postmarked in 1981 and 1982 were in the name of someone other than the applicant and, therefore, they have no probative value or evidentiary weight.

On August 7, 2003, the director issued a Form I-72, requesting that the applicant submit a printout of his earnings from the Social Security Administration and evidence of his continuous residence from 1981 to 1988. The applicant, in response, submitted receipts for registered mail postmarked in 1981 and 1982; however, as the receipts were in names other than the applicant, they have no probative value or evidentiary weight. The applicant also submitted a Circuit City receipt that indicated an individual named [REDACTED] received products on June 15, "1993."

In response to the Notice of Intent to Deny issued on July 1, 2004, counsel submitted a declaration from the applicant, who indicated that he worked at [REDACTED] Italian Restaurant located at [REDACTED] from November 1982 to the summer of 1985, and at Baker's Square Restaurant located in the city of West Covina from 1986-1987, but was unable to obtain employment verification letters as both restaurants were closed. Counsel submitted documentation that reflected his attempts to obtain employment documentation from Bakers Square Restaurant and Pies in Denver, Colorado. Counsel provided statement from a payroll distribution clerk,

who indicated that he was unable to verify the applicant's employment dates as their records are destroyed after five years. Counsel also provided:

- An affidavit from [REDACTED] of Azusa, California, who indicated that he has known the applicant since September 1981. [REDACTED] asserted that he and the applicant rented an apartment together at [REDACTED] from September 1, 1981 until July 1986. [REDACTED] indicated that he has remained in contact with the applicant since time.
- An affidavit from [REDACTED] of La Verne, California, who indicated that she has known the applicant since September 1981. [REDACTED] based her knowledge on having assisted the applicant in obtaining a job at that time. [REDACTED] asserted that the applicant has been her client at Jerry's Market since September 1981.
- Envelopes postmarked in March and May 1986, June and October 1986, and on February 5, 1987 by the applicant.

On appeal, counsel submits:

- A notarized affidavit from [REDACTED] of Covina, California, who indicated that the applicant rented a room at [REDACTED] from July 15, 1986 to July 31, 1990.
- A letter dated October 8, 2004 from [REDACTED] an evening administrator at the Azusa Unified School District, who indicated that except the period of April 1987 to June 1987, the applicant has attended classes since November 27, 1981. [REDACTED] attested to the applicant's Azusa address at [REDACTED] during the 1980's.

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 district director has not established that the information in this evidence was inconsistent with the claims made on the application, or that it was false information. 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 asserted claim 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.