



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



L2

FILE:



Office: LOS ANGELES

Date: DEC 03 2007

MSC 02 008 62737

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. The file has been returned to the National Benefits Center. 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.

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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate 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 should be given proper consideration given the fact that he is required to produce documents dated nearly 20 years ago. Counsel asserts that the evidence submitted to rebut the Notice of Intent to Deny should have been given greater weight than just a mere affidavit.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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 or 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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status since January 1, 1982, through May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

In connection with his Form I-485, Application to Register Permanent Resident or Adjust Status, the applicant indicated that he entered the United States on February 17, 1981. In support of his claim, the applicant submitted an April 6, 1990, sworn affidavit of witness by [REDACTED]. [REDACTED] stated that he met the applicant in 1981 as co-workers and they have remained close friends. [REDACTED] confirmed the applicant's residence in the United States from 1981 to the date of the affiant's letter. The affiant provided his address, but no contact number. Although not required, the affiant did not provide any supporting documentation of the affiant's identity or presence in the United States.

The applicant also submitted a May 31, 1990, unsigned but notarized employment verification document. The document states that the applicant worked as a cashier from February 1981 to July 1982. The document contains no letterhead, address, contact number, employer name or signature. In addition, the document does not indicate the applicant's address at the time of employment, show periods of layoff, declare whether the information was taken from company records, and identify the location of such company records as required under 8 C.F.R. § 245a.2(d)(3)(i).

In a March 2, 2005, Notice of Intent to Deny, the director stated that the applicant failed to meet his burden of proof of residence. The director determined that the affidavits did not contain sufficient specific information of knowledge and whereabouts for the time period attesting to. The director also determined that the affidavits were not accompanied with corroborating evidence for the statements made, thus lacking in probative value. The director granted the applicant thirty (30) days to submit additional evidence.

On March 29, 2005, in response to the Notice of Intent, counsel submitted a notarized letter from Rev'd [REDACTED] attesting to the applicant's residence in the United States since

1981. The affiant stated that he has known the applicant since the applicant arrived in the United States in 1981. The affiant stated that, in a sense, he adopted the applicant and his family. The affiant stated, "The highlight of our relationship occurred during Holy Week when I solemnized a wedding for a couple For [REDACTED] would do anything." The affiant provided a mailing address and contact number.

In a June 30, 2005, Notice of Decision, the director determined that the submitted documentation was insufficient to overcome the grounds for denial. The director stated that the file contains affidavits that have generic information and are fill-in-the blank. The director also stated that the affidavits were not accompanied with the affiants' identification and documentary proof of their whereabouts, in the period of question.

The AAO agrees with the director and finds that the applicant has failed to provide relevant, probative, and credible evidence. The applicant has not provided any verifiable, contemporaneous evidence of residence in the United States during the duration of the requisite period. Although not required, none of the affidavits included any supporting documentation of the affiant's identity or presence in the United States. None of the affiants indicated how they dated their acquaintance with the applicant or how frequently they saw the applicant. The absence of sufficiently detailed and consistent supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

Therefore, based on the above, the applicant has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, he is ineligible for permanent resident status under Section 1104 of the LIFE Act.

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