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U.S. Citizenship
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FILE:



MSC 02 232 63457

Office: LOS ANGELES

Date: FEB 06 2007

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:

Self-represented

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, 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 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, the applicant asserts that he has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988.

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 affidavits of identity notarized in March and April 1990 from four affiants who attested to the

applicant's use of the alias, [REDACTED] and indicated that they have known the applicant for 10 years. The applicant also submitted a California identification card issued on March 11, 1988.

On April 4, 2004, the director issued a Form I-72, requesting that the applicant furnish proof of continuous presence in the United States from 1981 to 1988. The record contains two letters dated November 9, 1994 and August 30 (no year given) from [REDACTED] president of The [REDACTED] in Los Angeles, California, who attested to the applicant's employment. The record also contains a Master Information document which appears to relate to the entity, [REDACTED] and listed a start date of September 15, 1986.

The letters from [REDACTED] however, have little evidentiary weight and probative value as the actual date the applicant's employment commenced was not listed. Likewise, the Master Information document fails to list the applicant's name and, therefore, it has not probative value.

On November 8, 2004, the director issued a Notice of Intent to Deny, advising the applicant that he had failed to submit sufficient evidence to establish his residence in the United States prior to January 1, 1982 through May 4, 1988. The applicant was advised that the affidavits were vague, did not contain sufficient information and were no accompanied by corroborative evidence. The applicant was advised that at the time of his interview, he indicated that he had departed the United States on two separate occasions; one with advance parole and one without between 1990 and 1993. The applicant was also advised that he had stated he never departed the United States during the 1980s. However, on his Form for Determination of Class Membership dated April 11, 1990, and his Form I-687 application dated April 9, 1990, the applicant indicated that he departed the United States to Mexico to visit his family on December 25, 1987.

The applicant, in response, asserted, in part:

During the interview it is true that I said that I left two times once with permission and the other without. I was asked if I had left in 1980's. I could not remember when in 1980 that I had traveled. So I told him I did not remember when it was that I had traveled because I could not say with absolute certainty. In addition, I was nervous and the fact that I did not remember that date of my travel made me more nervous. In addition to the fact that I could not remember when I left and I did not want to tell the officer a date that I was not sure.

The applicant asserted that during 1987 he experienced great losses within his family and blocked out his travels to Mexico. The applicant stated that in June 1987, his brother [REDACTED] and sister-in-law died in a car accident in San Jose, California and on November 30, 1987, his brother, [REDACTED] passed away and his mother became very ill. The applicant stated, "I traveled to Mexico in December 1987 to be with my mother and attend the funeral. I stayed only two weeks." The applicant provided photocopies of [REDACTED] death certificate in the Spanish language along with the required English translation, and [REDACTED] death certificate.

The AAO has considered the applicant's statement and conclude that the applicant has overcome the discrepancies regarding his failure to acknowledge his 1987 departure from the United States at the time of his LIFE interview.

The applicant also provided:

- A letter dated November 29, 2004 from Reverend [REDACTED] pastor of St. Patrick Church in Los Angeles, California, who indicated that the applicant has been a member of its parish since 1987.
- A letter dated November 24, 2004 from [REDACTED], owner of [REDACTED] in Los Angeles, California, who attested to the applicant's residence in the United States since 1981. Ms. [REDACTED] asserted that the applicant has been a client since that time.

On appeal, the applicant asserts that he has submitted "copies of his taxes, employment verification letters, his children's birth certificates, rental receipts and utility bills, etc from the period of 1981 until the date of the submission of his application." This assertion, however, is unfounded as the record contains no such documentation. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The applicant also asserts that he submitted "letters signed by his former employer, [REDACTED] and [REDACTED] from [REDACTED] verifying employment when his children were in school." As previously noted above, the letters from [REDACTED] did not indicate the actual date the applicant's employment commenced and, therefore, they have little evidentiary weight or probative value in this proceeding. It is noted that according to the school transcripts in the record, his son attended school in the United States subsequent to the period in question.

The AAO does not view the affidavits from the affiants [REDACTED] discussed above as substantive enough to support a finding that the applicant continuously resided in the United States during the requisite period. The affiants stated that they have known the applicant since 1980, but provided no details as to how and where they met, the nature of their interaction in subsequent years or the applicant's address. The letter from [REDACTED] has little evidentiary weight or probative value as it does not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, the reverend does not explain the origin of the information to which he attests. [REDACTED] states that she has been acquainted with the applicant since 1981, but failed to provide the applicant's address. The California identification card serves only to establish the applicant's presence in the United States since March 1988. The record does not contain any other materials to support the applicant's claim that he entered the United States in 1981, and that he continuously resided in the United States through May 4, 1988.

Given the virtual absence of contemporaneous documentation, and the insufficiency of the affidavits, it is concluded that the applicant has failed to establish, by a preponderance of evidence, continuous residence for the required period. Therefore, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

It is noted for the record that on August 8, 1994, the applicant was convicted of violating section 12025(a)(1) PC, carrying a concealed weapon within a vehicle, a misdemeanor. Case no. [REDACTED] While this conviction does not render the applicant ineligible pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a), the AAO notes that the applicant does have a misdemeanor conviction.

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