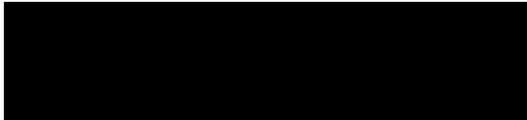




U.S. Citizenship  
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FEB 27 2007

FILE: MSC 01 286 60027

Office: NEW YORK

Date:

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. 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, New York, New York, and 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 asserts that the director's decision was "arbitrary, unreasonable and contrary to the weight of the evidence." Counsel submits a brief in support of the 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. Section 1104(c)(2)(B) of the LIFE Act; 8 C.F.R. § 245a.11(b).

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 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.

In her Notice of Intent to Deny (NOID) dated August 14, 2004, the director notified the applicant that [REDACTED], who had prepared his application, was convicted in federal district court of conspiracy, aiding and abetting and false statements. The director further notified the applicant that [REDACTED] who had notarized some of the supporting documentation for his application had been convicted in federal district court of conspiracy to file false statements, and that [REDACTED] and [REDACTED] who had also notarized his supporting documentation, were [REDACTED]'s accomplices.

The record reflects that in a November 1, 1996 Notice of Intent to Revoke his class membership, the applicant was notified that on May 8, 1995, as a result of a large-scale investigation into immigration fraud in Las Vegas, Phoenix and Los Angeles, [REDACTED] was convicted of violating 18 U.S.C. § 2 (aiding and abetting), 18 U.S.C. § 371 (conspiracy), and 18 U.S.C. § 1001 (false statements). The letter informed the applicant that trial testimony had established that [REDACTED] and his staff, in collaboration with others, filed fraudulent Legalization, Special Agricultural Worker (SAW) and class membership applications. The applicant was also notified that, as a result of the same investigation [REDACTED] who notarized his self-employment letter, was convicted on December 9, 1993 in the United States District Court, District of Nevada of violating 18 U.S.C. § 371 (conspiracy to file false statements). The applicant was advised that [REDACTED] assisted in the preparation of fraudulent Legalization, SAW and class membership applications by providing notary, fingerprinting and photography services. The applicant was advised that to avoid revocation of his class membership, he must provide specific information in rebuttal of the Notice of Intent to Revoke.

In response, the applicant submitted a letter denying that [REDACTED] had notarized his self-employment letter and that he had "turned to [REDACTED] for legal assistance" because he had "only a basic knowledge of the English language" at the time he filed his Form I-687, Application for Status as a Temporary Resident. The applicant denied that he had paid a bribe in connection with his class

membership application; however, no other documentation was submitted in rebuttal of the Notice of Intent to Deny. Therefore, the applicant's class membership was revoked on January 4, 1997.

In her NOID, the district director informed the applicant that documents notarized by [REDACTED] and [REDACTED] were also suspect, as they were accomplices of [REDACTED]. However, there is no evidence in the record to support the director's statements regarding [REDACTED] or [REDACTED], and her statements regarding these individuals are withdrawn. Further, although the director indicated that the applicant's rebuttal did not overcome the grounds set forth in the NOID, the record does not reflect that the applicant responded to the NOID.

On appeal, counsel concedes that the documents submitted by the applicant in support of his application were "provided" by [REDACTED]. Counsel argues, however, that [REDACTED]'s conviction of providing false documentation to Legalization applicants should not be used to "adjudicate[e] guilt of another." Counsel asserts that as "[REDACTED] did not specifically deny the authenticity of documentary evidence supplied by the evidence," such evidence is "of probative value and must be accorded significant weight."

Counsel's arguments are without merit. 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.

The applicant's evidence consists of the following:

- An August 23, 1989 affidavit from [REDACTED], notarized by [REDACTED]. In his affidavit, [REDACTED] stated that to his personal knowledge the applicant had lived at the following addresses during the qualifying period: [REDACTED] in Union City, California from November 1981 to June 1983; [REDACTED] from June 1983 to December 1985; and at [REDACTED] in Oakland, California from December 1985 to December 1988. These addresses and time frames are consistent with those claimed by the applicant. [REDACTED] stated that he has known the applicant since 1978 but provided no information about the nature of his relationship with the applicant, the circumstances of his acquaintance with the applicant or the basis of his knowledge of the applicant's residency in the United States.
- An August 22, 1989 affidavit from [REDACTED] notarized by [REDACTED]. [REDACTED] stated that to his personal knowledge, the applicant lived at [REDACTED] from November

1981 to June 1983. [REDACTED] also claimed to have known the applicant since 1978. [REDACTED] statement regarding the applicant's residence from 1981 to June 1983 is inconsistent with that of the applicant and [REDACTED], discussed above, who stated that the applicant lived at [REDACTED]. The applicant did not state that he lived at [REDACTED] at any time during the qualifying period. Additionally, as with N [REDACTED] provided no information about the nature of his relationship with the applicant, the circumstances of his acquaintance with the applicant or the basis of his knowledge of the applicant's residency in the United States.

- An August 22, 1989 affidavit from [REDACTED], notarized by [REDACTED]. Mr. [REDACTED] stated that he had known the applicant since 1980, and his account of the applicant's residences is consistent with that of [REDACTED]. However, as with the other affiants, [REDACTED] provided no information about the nature of his relationship with the applicant, the circumstances of his acquaintance with the applicant or the basis of his knowledge of the applicant's residency in the United States.
- A December 17, 1989 "self employment letter" signed by the applicant and containing a notary stamp but not the signature of [REDACTED]. The applicant stated he had been a resident of the United States and had been self-employed since 1981.
- A July 21, 1989 sworn statement from [REDACTED], the applicant's cousin, in which he stated that the applicant visited him in Canada from July 1 to August 1, 1987. While [REDACTED] statement indicated that the applicant was "presently living in [the] U.S.A.," he did not state that the applicant's visit in 1987 was from the United States or that the applicant was residing in the United States during the qualifying period.

The applicant submitted no other documentation to establish his presence and residency in the United States during the qualifying period. While affidavits in certain cases can effectively meet the preponderance of evidence standard, the circumstances surrounding the applicant's application (the conviction of the person who prepared his application, the admission of one of his notaries that he provided false documentation, and counsel's admission that the same notary provided documents for the applicant) mitigate against the credibility of the affidavits submitted by the applicant. Despite given the opportunity to do so, the applicant submitted no other documentation, such as utility receipts, letters, envelopes, affidavits from others who knew him during the qualifying period, or similar documentary evidence to confirm his presence and residency in the United States during the requisite period.

Counsel asserts that that, "Historically speaking, illegal workers have been treated as contract laborers and paid on a cash basis. As a result, limited if any employment or payroll records are maintained by the employers." Even if we accept counsel's unsupported statement as fact,<sup>1</sup> neither counsel nor the applicant has alleged that this "historical" concept is applicable to the applicant. In fact, the applicant alleged that he was self-employed during the qualifying period and therefore responsible for his own employment records. Additionally, neither counsel nor the applicant addressed the availability of other documentation, such as

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<sup>1</sup> Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

those enumerated above and in 8 C.F.R. § 245a.2(d)(3), that would assist in establishing the applicant's eligibility for benefits under the LIFE Act.

Accordingly, 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.