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Office: LOS ANGELES

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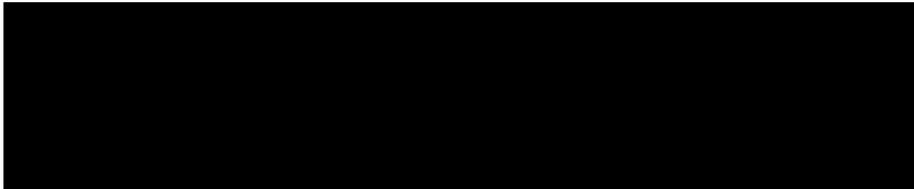
Applicant:



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, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The district director denied the application because the applicant had not: 1) demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988; and 2) maintained continuous physical presence in the United States from November 6, 1986 through May 4, 1988 due to his 1987 deportation.

On appeal, counsel asserts, in part:

In 1987 he was ordered deported and [the applicant] departed the United States for 27 days. 8 C.F.R. section 245a.15 in part states that an alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred eighty days (180) days between January 1, 1982 and May 4, 1988. [The applicant's] departure did not exceed 45 days, he was only absent for a period of 27 days.

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 must establish continuous presence in the United States during the period beginning on November 6, 1986, and ending May 4, 1988. 8 C.F.R. § 245a.11(c).

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).

An alien shall not be considered to have resided continuously in the United States, if, during any period for which continuous residence is required, the alien was outside of the United States under an order of deportation. Section 245A(g)(2)(B)(i) of the Act, 8 U.S.C. § 1255a(g)(2)(B)(i).

“Continuous residence” is defined in the regulations at 8 C.F.R. § 245a.15(c)(1), as follows:

Continuous residence. An alien shall be regarded as having resided continuously in the United States if:

- (1) No single absence from the United States has exceeded *forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed. [Emphasis added.]

The record reflects that on April 17, 1986, the applicant was apprehended by the Border Patrol in Orange County, California for illegal entry. A removal hearing was held on January 23, 1987, and the alien was granted voluntary departure from the United States on or before March 23, 1987. The applicant departed voluntarily from the United States on March 20, 1987. The director’s finding is in error as the applicant complied with the order of the voluntary departure and, therefore, he cannot be considered to be deported.

Nevertheless, the record contained additional documentation that would impact adversely on counsel’s claim that the applicant was outside of the United States for only 27 days. The record contains a letter from the applicant’s brother, [REDACTED], that was received by the San Diego District Office on August 4, 1987. In response to a Form I-166 issued by the District Director, San Diego California, which requested the applicant’s presence on August 14, 1987, Javier stated that the applicant have not resided in the United States since he voluntarily departed on March 20, 1987.

Pursuant to the regulation at 8 C.F.R. § 103.2(b)(16)(i), on April 3, 2007, the AAO sent a notice to the applicant advising him of this contradicting information and provide him with an opportunity to respond. In response, counsel provided copies of documents previously submitted with the applicant’s LIFE application along with the following documents:

- An earnings statement from the Social Security Administration dated April 11, 2007, which reflects the applicant’s earnings in 1987 and 1988 as well as 1985 and 1986.
- Wage and Tax Statements for 1987 and 1988 from Laguna Cookie Company in Fountain Valley, California.
- Pay stubs from Laguna Cookie Company, Inc, for the periods ending April 10, 1987 through April 25, 1987; June 14, 1987 through July 4, 1987; August 1, 1987; August 22, 1987 through September 5, 1987; October 31, 1987, November 28, 1987 through December 26, 1987; January 9, 1988; January 23, 1988; February 20, 1988; and March 5, 1988 through April 2, 1988.

The documents presented by counsel have been considered and it is determined that said documents establishes that the applicant did not break his continuous residence or presence in the United States during

the requisite period. In addition, based on the pay stubs for the periods ending April 10 & 25, 1987, the applicant's departure did not exceed the 45-day limit for a single absence from the United States.

In her Notice of Intent to Deny issued on October 8, 2004, the director noted that the applicant had submitted only affidavits in an attempt to establish his residence from 1981 to 1983, and said affidavits were not accompanied by other credible documentation.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through December 31, 1983, the applicant provided the following evidence:

- A letter dated June 15, 2001, from [REDACTED], supervisor for the 5th district, Orange County, California, who indicated that the applicant assisted with his late wife in 1982.
- A notarized letter dated May 23, 1990, from [REDACTED] of South Laguna, California, who indicated that she has known the applicant for over ten years and the applicant was in her employ as a housekeeping on several occasions.
- A notarized letter dated May 21, 1990, from [REDACTED] of South Laguna, California, who indicated that she has known the applicant since 1981. The affiant asserted that the applicant "worked for us here at our home and also did work at one of our rentals that year.
- A letter dated May 18, 1990 from [REDACTED] of Laguna Niguel, California, who indicated that the applicant was employed as a landscaper for her family from May 1981 to December 1983.

Pursuant to *Matter of E--M--*, *supra*, affidavits in certain cases can effectively meet the preponderance of evidence standard, and the director cannot simply refuse to consider such evidence merely because it is unaccompanied by other forms of documents. 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 record contains no evidence to suggest that the director attempted to contact any of the former employers to verify the authenticity of the applicant's employment during the period in question.

In this instance, the documents submitted in response to the AAO's letter coupled with the documents submitted with his LIFE application tends to corroborate his claim of residence in the United States during the requisite period. 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 on *Matter of E--M--*, *supra*, when something is to be established by a preponderance of evidence, the applicant only has to establish that the proof 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.

To be eligible for adjustment to permanent resident status under the LIFE Act the applicant must also establish his continuous physical presence in the United States from November 6, 1986 through May 4, 1988. 8 C.F.R. § 245a.11(c).

ORDER: The appeal is sustained.