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JUN 26 2007

FILE: [REDACTED]  
MSC 02 106 64731

Office: LOS ANGELES

Date:

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:

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. 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, and 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. The director determined that the applicant had entered into and resided in the United States since January 1987, but had failed to submit credible evidence showing residency in the United States prior to his entry in 1987.

On appeal, the applicant submits additional affidavits and asserts that he has submitted sufficient evidence to establish continuous residency in the United States prior to his last entry on January 11, 1987.

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 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).

While there is no specific regulation which governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements which affidavits are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information which an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to. See 8 C.F.R. § 245a.2(d)(3)(v).

Nevertheless, an affidavit not meeting all the foregoing requirements may still merit consideration as "any other relevant document" pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must be on employer letterhead stationery, if the employer has such stationery, and must include the following:

- (A) Alien's address at the time of employment;
- (B) Exact period of employment;
- (C) Periods of layoff;
- (D) Duties with the company;
- (E) Whether or not the information was taken from official company records; and
- (F) Where records are located and whether the Service may have access to the records.

The regulation further allows that if official company records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and explaining why such records are unavailable may be submitted in lieu of meeting the requirements at (E) and (F) above.

Here, the submitted evidence is relevant, probative, and credible.

The applicant submitted substantial contemporaneous documentation and other evidence showing he resided in the United States subsequent to his entry on January 11, 1987. The director did not dispute the applicant's claim to have resided continuously in the United States after his entry, but found that the applicant had failed to establish his residency in the United States prior to January 11, 1987. In an attempt to establish continuous unlawful residence since before January 1, 1982 through January 11, 1987, the applicant provided the following evidence throughout the application process:

- An affidavit notarized on October 12, 2004 from [REDACTED] of Palmdale, California stating that the applicant worked for her doing yard work from 1982 to 1986.

- An affidavit notarized on October 12, 2004 from [REDACTED] of Palmdale, California stating that the applicant “did yard maintenance, garage clean-up and organization, small paint and repair work, and other odd jobs” for her from the “latter half of 1981” until 1986.
- An affidavit notarized on October 12, 2004 from [REDACTED] of Lancaster, California stating that she has known the applicant since 1982 when he “came to help with yard work, garage cleaning and assorted other tasks” after the affiant’s husband became disabled.
- An affidavit notarized on October 12, 2004 from [REDACTED] of Palmdale, California stating that he employed the applicant as a handyman for “roof repair, yard work and other mechanical fix it jobs” from 1982 to 1986.
- An affidavit notarized on October 12, 2004 from [REDACTED] of Lancaster, California stating that he employed the applicant as a part-time landscaper from 1982 to 1986.
- A letter dated September 7, 2004 from [REDACTED] of Lancaster, California stating that he employed the applicant as a part-time landscaper from 1982 to 1986.
- A letter dated September 7, 2004 from [REDACTED] of Palmdale, California stating that the applicant “did yard maintenance, garage clean-up and organization, small paint and repair work, and other odd jobs” for her from the “latter half of 1981” until 1986.
- A letter dated September 5, 2004 from [REDACTED] of Palmdale, California stating that he employed the applicant as a handyman for “roof repair, yard work and other mechanical fix-it jobs” from 1982 to 1986.
- A letter dated September 4, 2004 from [REDACTED] of Palmdale, California stating that the applicant did yard work for her from 1982 to 1986.
- A letter dated September 3, 2004 from [REDACTED] of Lancaster, California stating that she has known the applicant since 1982 when he “came to help with yard work, garage cleaning and assorted other tasks” after the affiant’s husband became disabled.
- An affidavit notarized on April 18, 1990 from [REDACTED] of Palmdale, California stating that he was the applicant’s employer/landlord and that the applicant lived in a trailer at [REDACTED] in Palmdale, California from July 1981 to November 1986 and at [REDACTED] from September 1, 1989 to that date.
- An affidavit notarized on April 14, 1990 from [REDACTED] of [REDACTED] stating that he employed the applicant as a car washer two times a week from July 1981 to November 1986.

- An affidavit notarized on April 5, 1990 from [REDACTED] of Palmdale, California attesting to the applicant's residence at [REDACTED], in Lancaster, California from August 1987 to September 1989 and [REDACTED] in Lancaster, California from September 1989 to the date of the affidavit.
- An affidavit notarized on April 5, 1990 from [REDACTED] of Lancaster, California attesting to the applicant's residences from January 1987 to April 1990.
- A lease agreement signed by the applicant for the lease of an apartment at [REDACTED] commencing on August 1, 1987.
- A receipt for a driver's license issued to the applicant at [REDACTED] in Lancaster, California on February 4, 1987.
- Receipts for rent paid in January 1988 for apartment at [REDACTED] in Lancaster, California.
- Utility bills dated August through December 1987 and January through February 1988 issued to the applicant at [REDACTED] in Lancaster, California.
- Utility bills dated May and June 1987 issued to the applicant at [REDACTED] in Lancaster, California.

On August 26, 2004, the director issued a Notice of Intent to Deny (NOID) acknowledging that the applicant had submitted the two affidavits from [REDACTED] but also stating that the applicant had "provided no evidence to establish [his] residence from 1981 to 1987."

In a response dated September 21, 2004, the applicant asserted that [REDACTED] was both his part-time employer and his landlord from 1981 to 1986, but that he also worked odd jobs as a handyman during the period and was submitting letters from some of the people who contracted for his services. The applicant indicated that he left the United States on November 30, 1986 to visit family in Chile, returning again with a B-2 visa on January 11, 1987.

In a decision to deny the application dated December 23, 2004, the director stated that the affidavits submitted by the applicant in response to the NOID were not notarized under oath and "only one claimed [the applicant was] in the United States before January 1, 1982." The director found that the information submitted by the applicant "failed to overcome the grounds for denial as stated in the NOID" and denied the application.

On appeal, the applicant asserts that he has submitted sufficient evidence of residency and submits notarized affidavits containing the same testimony as the letters he previously submitted in response to the NOID.

Upon review of all the evidence in the record, the AAO determines that the submitted evidence is sufficiently relevant, probative, and credible on its face to meet the applicant's burden of proof.

Contrary to the director's statement in the NOID, the affidavits from [REDACTED], which were later supplemented by affidavits from other witnesses, do constitute probative evidence of the applicant's residency. Although these affidavits, along with the others submitted by the applicant, do not meet all the regulatory requirements noted herein, they do contain sufficient detail to warrant consideration as "other relevant documents" showing that the applicant resided and worked in the United States during the period in dispute. The director did not list any specific deficiencies in these affidavits other than stating that those submitted by the applicant in response to the NOID were not notarized, but the applicant has remedied this deficiency. The director has not indicated that any effort was made to contact the affiants to verify the information contained in the affidavits though there is enough information included in the affidavits to allow for verification. When taken together, these affidavits present a consistent account of the applicant's residency in the United States during the disputed period.

The regulation at 8 C.F.R. § 245a.12(e) provides that "[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods." Preponderance of the evidence is defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5<sup>th</sup> ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

When viewed in its totality, the evidence submitted by the applicant is probative and presents a consistent account of the applicant's residency in the United States from before January 1, 1982 through May 4, 1988. Based on the evidence in the record, the AAO determines that it is more probable than not that the applicant resided continuously in continuous residence in an unlawful status in the United States from before January 1, 1982 through May 4, 1988.

The applicant has met his burden of proving continuous residence in an unlawful status in the United States from before January 1, 1982 through May 4, 1988. Accordingly, the applicant has established eligibility to adjust to Legal Permanent Resident status under section 1104 of the LIFE Act.

**ORDER:** The appeal is sustained. The application is returned to the director for adjudication consistent with the foregoing.