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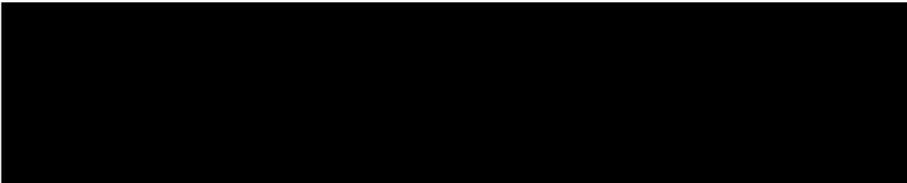
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JUN 28 2007

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:



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, Chicago, Illinois, 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, counsel asserts that the applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel argues that the preponderance of the evidence standard simply requires that the applicant "establish that he was more probably than not in the United States" during the requisite period. Counsel asserts that the director failed to consider the documents submitted in response to the Notice of Intent to Deny. Counsel provides copies of the previously submitted documents 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. 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).

Here, the submitted evidence is not relevant, probative, and credible in an attempt to establish continuous unlawful residence in the United States since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence:

- A High School Equivalency Diploma Transcript and a High School Equivalency Diploma from the University of the State of New York Education Department issued on September 8, 1981. The documents listed the applicant's New York address as [REDACTED]
- A Department of Motor Vehicles (DMV) Interim License/Identification Card issued on August 13, 1982, which listed the applicant's New York address at [REDACTED] and expired on September 27, 1982.
- A renewal notice for the applicant's identification card from the Department of Motor Vehicles Identification Card dated July 9, 1987.
- Two envelopes postmarked in 1983 and 1985 addressed to the applicant's New York address at [REDACTED]
- An outpatient lab report from a medical facility in Illinois dated September 12, 1986.
- A receipt dated November 3, 1987 from Direct Auctioneers/Galleries, which listed the applicant's Illinois address as [REDACTED] Arlington Heights.
- A lease agreement entered into on May 1, 1988 for premises at [REDACTED] Arlington Heights, Illinois.
- An affidavit notarized February 7, 2003, from [REDACTED] of Brooklyn, New York, who attested to the applicant's residence at [REDACTED] Corona, Queens, New York from July 1981 to September 1986.
- A letter from [REDACTED], priest and rector of St. Paul's Church By The Lake in Chicago, Illinois, who indicated that the applicant has been associated with the church since the mid 1980's, "first while living in Rogers Park, then again after returning from a few years living in Arlington Heights." The affiant asserted that he has known the applicant since he became the priest of the parish in 1993.

On February 28, 2003, the director issued a Notice of Intent to Deny, which advised the applicant of his failure to submit evidence to establish continuous residence in the United States during 1984 and 1987. The applicant was also advised that the affidavit submitted to establish his residence were vague and unspecific and the other evidence "only covers on month during each of the years in question."

The director, in denying the application, concluded that the applicant failed to respond to the notice. The record, however, reveals that the applicant provided a response to the Notice of Intent to Deny, which was received prior to the issuance of the director's Notice of Decision. The applicant, in response, submitted:

- A financial agreement dated July 29, 1987, from Arlington Dental Group in Arlington Heights, Illinois.
- A receipt from Golden Crown Jewelers in Chicago, Illinois dated July 23, 1987.
- A Physician Discharge Order dated September 24, 1984, from The Mount Sinai Hospital of Queens (New York).
- A notarized affidavit from [REDACTED] who indicated that she first met the applicant in 1983 while visiting New York. The affiant attested to the applicant's New York residence [REDACTED] and asserted that she had remained in contact with the applicant through visits, mail and telephone calls throughout his residence in New York. The affiant asserted that in 1986 the applicant moved to Chicago and resided at [REDACTED] Arlington Heights and was employed at Service Merchandise as a customer service representative. The affiant asserted that she has remained in contact with the applicant since that time.

The AAO does not view some of the documents discussed above as substantive enough to support a finding that the applicant continuously resided in the United States during the requisite period. [REDACTED] attested to the applicant's continuous residence in the United States from 1981 to 1986, but provided no detail regarding the nature or origin of her relationships with the applicant or the basis for her continuing awareness of the applicant's residence. In addition, [REDACTED]'s affidavit has little probative value as it contradicts the documentation from the DMV, which listed a different address for the applicant during the period in question. The applicant has not provided evidence such as a lease agreement, rent receipts, or utility bills to corroborate [REDACTED]'s affidavit.

[REDACTED] affidavit has little probative value or evidentiary weight as she was not residing in the New York during 1983 to 1986. [REDACTED] indicated that the applicant had family residing in Chicago, but the applicant provided no evidence from any family member in an attempt to establish his residence in the United States.

The letter from [REDACTED] is contradicting and does not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). [REDACTED] asserted that the applicant first resided in [REDACTED] in the mid 1980's; however, the applicant did not claim any residence in [REDACTED] on his Form I-687 application. Further, [REDACTED] indicated that he has known the applicant only since 1993. Most importantly, the pastor does not explain the origin of the information to which he attests. It is noted that the applicant indicated on his Form I-687 application that he was *not* affiliated with any church during the requisite period.

The Physician Discharge Order may only serve to establish the applicant's presence in the United States on September 24, 1984, as no *credible* evidence has been submitted to establish his continuous residence in the United States during this period. The applicant, throughout the application process, has not provided any employment documentation to corroborate his claim of employment listed on his Form I-687 application.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

Given the credibility issues arising from the documentation provided by the applicant, it is determined that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982 and resided in this country in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant 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.