



U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC 01 325 60063

Office: CHICAGO

Date: MAR 15 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 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 is incorrect as a matter of fact and law, and that the director failed to give "any credit to the extensive secondary evidence submitted to prove physical presence for the years 1981-1983." 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).

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 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.

Although Citizenship and Immigration Services (CIS) 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant stated in his LIFE Act adjustment interview that he entered the United States in August 1981, when he was 14 years old. According to his June 10, 1992 Form I-687, Application for Status as a Temporary Resident, the applicant lived at the following addresses in Chicago: [REDACTED] from August 1981 to May 1985, [REDACTED] from June 1985 to October 1986, [REDACTED] from October 1986 to January 1987, and [REDACTED] from January 1987 until the date the Form I-687 application was signed. The applicant also stated that he was self-employed as a painter and janitor from

August 1981 to January 1983, as a busboy at Elyson Restaurant from January 1983 to July 1987, and as a janitor with Moreno Construction from January 1987 to July 1990.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant submitted the following evidence:

1. A June 5, 1992 sworn statement from [REDACTED] in which he stated that he has been a friend of the applicant's since 1983. In a June 18, 1992 affidavit, [REDACTED] stated that the applicant had resided in the United States since 1983, and that he was absent from the country from July 20 to August 13, 1987. [REDACTED] stated that he knew the applicant because he used to go to the restaurant where the applicant worked.
2. Forms W-2, Wage and Tax Statements, for the years 1984, 1985, and 1986 with corresponding federal and state tax returns.
3. A January 1985 student card from Chicago Urban Skills Institute, Chicago.
4. An Illinois driver's license issued to the applicant on July 17, 1985.
5. A June 5, 1992 letter from [REDACTED] in which he stated that the applicant worked for him as a janitor from January 1, 1987 to February 1, 1991, and was given an apartment in lieu of paying rent. [REDACTED]'s letterhead indicates that he is a general contractor. He did not identify the building or property that he owned and leased to the applicant. [REDACTED]'s letter also conflicts with that of the applicant's statement on the Form I-687 application, where he stated that he paid \$130 per week as rent while he worked as a janitor for Moreno Construction. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).
6. A rental receipt dated September 3, 1986 for [REDACTED], showing the applicant as the remitter.
7. Copies of pay slips for [REDACTED] dated in 1987 and 1988. The pay slips did not indicate an employer, and the applicant did not state that he ever used or was known by the name [REDACTED]. However, the pay slips contain the social security number used by the applicant on his driver's license and which is reflected on the Forms W-2 from Elyson Restaurant, Inc.

In response to the director's Notice of Intent to Deny dated May 9, 2003, the applicant submitted the following affidavits:

8. A May 29, 2003 affidavit from [REDACTED] the applicant's brother, in which he stated that the applicant came to the United States in 1981, and shared an apartment with him at [REDACTED]. [REDACTED] stated that he cleaned the building in exchange for rent, and that after his arrival, the applicant stayed home during the days and helped him with the cleaning of the building. The affiant also stated that all of the utilities were in his name; however, no evidence was submitted to verify this statement.

9. A May 29, 2003 affidavit from [REDACTED], the applicant's cousin, who stated that the applicant came to the United States in 1981 and lived with his brother, [REDACTED] and that he also shared the apartment briefly in 1981 and 1982.

On appeal, the applicant submits a sworn statement from [REDACTED], in which he states that [REDACTED] did some work around one of his buildings in exchange for rent, and that the applicant lived with his brother for about four years beginning in about August 1981. While [REDACTED] states that he is aware that the applicant lived with his brother, he does not indicate how he placed the applicant in the apartment in 1981. Further, the applicant submitted no corroborative evidence that [REDACTED] owned and rented apartments at [REDACTED], or that a particular apartment at that address was occupied by the applicant or his brother during the stated time frame.

In this instance, the applicant has submitted five affidavits or third-party statements attesting to his residence in the United States during the period in question. While affidavits in certain cases can effectively meet the preponderance of evidence standard, the affidavits submitted by the applicant lack the objectivity and/or specificity to establish that the applicant was more likely than not residing unlawfully in the United States during the requisite period. The evidence submitted by the applicant of his presence and residency in the United States prior to 1984 consists of affidavits from his brother, cousin and a friend. Although on appeal, the applicant submits a statement from [REDACTED], his brother's putative landlord, there is nothing in his statement that confirms his personal knowledge of the applicant's presence and residency in the United States from 1981 to 1985, as implied in his statement.

Counsel asserts on appeal that the affidavits should be given substantial weight because of their clarity and detail. However, we note that the only detailed affidavits in the record are from the applicant's brother and cousin. The other, more objective statements provided by the applicant are ambiguous as to pertinent details that would tend to verify the applicant's residency during the qualifying period.

Accordingly, it is concluded that the applicant failed to establish that he continuously resided unlawfully in the United States from prior to January 1, 1982 to May 4, 1988.

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