



U.S. Citizenship
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FILE: [REDACTED]
MSC 01 354 61096

Office: CHICAGO

Date: APR 08 2008

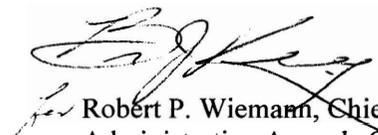
IN RE: Applicant: [REDACTED]

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.


for 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, the applicant asserts that he has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. The applicant asserts that he has no bills to provide for 1982 as he was residing in the house of another individual whose name was listed on the bills. The applicant provides additional evidence in support of the appeal.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act that were most recently in effect before the date of the enactment of this Act shall apply.

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).

The director, in denying the application, noted that the applicant had presented sufficient evidence to establish continuous residence and physical presence in the United States since 1983, but had failed to establish unlawful residence since prior to January 1, 1982.

A review of the record reflects that the applicant has submitted evidence, including contemporaneous documents, which tends to corroborate his claim of residence in the United States from July 1983 through May 4, 1988. The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status since before January 1, 1982 to June 1983. Here, the applicant has failed to meet this burden.

In an attempt to establish continuous unlawful residence since before January 1, 1982, to June 1983, the applicant provided the following evidence throughout the application process:

- Two letters dated March 21, 2003, and September 20, 1993, from [REDACTED] owner of [REDACTED] Refrigeration in Chicago, Illinois, who attested to the applicant's employment as a helper from November 1, 1981 to October 1982.
- A letter dated July 2, 1991, from [REDACTED] of [REDACTED] Second Hand Store in Chicago, Illinois, who indicated the applicant was employed as a salesman helper from November 1982 to June 1983.
- A notarized affidavit from [REDACTED], who attested to the applicant's employment at [REDACTED] Second Hand Store from November 1982 to June 1983 and to the applicant's Chicago residence from November 1981 to May 1985 at [REDACTED]. The affiant asserted that he has been a friend of the applicant since that time.
- A letter dated June 4, 1991, from [REDACTED] of Multinational Distributors, Inc. in Chicago, Illinois, who indicated the applicant's uncle, [REDACTED], was a tenant at [REDACTED] from November 1981 to May 1985. The affiant also indicated that the applicant resided at this location during his uncle's tenancy.
- A notarized affidavit from [REDACTED] who indicated that he rented an apartment with the applicant from November 1981 to February 1985.
- A letter dated March 24, 2004, from [REDACTED] of [REDACTED] Restaurant in Chicago, Illinois, who indicated the applicant has been a customer since December 1981.
- A notarized affidavit from [REDACTED] of Chicago, Illinois, who indicated he met the applicant in November 1981 at the applicant's place of employment, [REDACTED] Refrigeration, and attested to the applicant's Chicago residence at [REDACTED]. The affiant asserted that he has maintained his friendship with the applicant since that time.
- A letter dated March 23, 2004, from [REDACTED], pastor of St. Roman Parish in Chicago, Illinois, who indicated that the applicant has been a member of its parish since 1982 and attested to the applicant's previous residence at [REDACTED], Chicago, Illinois.
- A notarized affidavit from [REDACTED], an aunt, who indicated the applicant resided in her homes, [REDACTED] from November 1981 to May 1985 and [REDACTED] from June 1985 to June 1991.

- A notarized affidavit from [REDACTED], a brother, who indicated that he supported the applicant from November 1981 to June 1983, provided him room and board “due to the fact that he was unemployed and unable to get a job.”
- A notarized affidavit from [REDACTED] who attested to the applicant’s residence in the United States since November 1981. The affiant asserted that he was a neighbor of the applicant.
- A notarized affidavit from [REDACTED] who indicated he has known the applicant since November 1981 and attested to the applicant’s employment at [REDACTED] Refrigeration through October 1982.
- Several photographs the applicant claimed to have been taken in 1981 and 1982.

In his Notice of Intent to Deny issued on May 23, 2003, the director advised the applicant that he did not provide sufficient primary evidence to establish his claim. The director noted that the affidavits and other documentation had been taken into consideration, but it was determined that the applicant had not established by a preponderance of evidence that he met the requirements to adjust his status under the LIFE Act.

Citizenship and Immigration Services (CIS) has determined that affidavits from third party individuals may be considered as evidence of continuous residence. *See Matter of E-- M--*, supra. In ascertaining the evidentiary weight of such affidavits, CIS must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E-- M--*, supra, the affidavits would not necessarily be fatal to the applicant's claim, if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony provided. The statements issued by the applicant have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant continuously resided in the United States since before January 1, 1982 to June 1983 as he has presented contradictory documents, which undermines his credibility. Specifically:

1. [REDACTED] and [REDACTED] indicated the applicant was in their employ as a helper from November 1981 to October 1982 and November 1982 to June 1983, respectively. However, the applicant’s brother, [REDACTED], indicated that he supported the applicant from November 1981 to June 1983 because the applicant was unemployed and not able to get a job. No explanation has been provided for these contradictions.
2. [REDACTED], and [REDACTED] attested to the applicant’s employment at [REDACTED] Refrigeration while [REDACTED] attested to the applicant’s employment at [REDACTED] Second Hand Store, respectively. However, the applicant’s brother, [REDACTED], indicated that he supported the applicant from November 1981 to June 1983 because the applicant was unemployed and not able to get a job. No explanation has been provided for these contradictions.

As conflicting statements have been provided, it is reasonable to expect an explanation from the affiants in order to resolve the contradictions. However, no statement from the affiants has been submitted to resolve the contradicting affidavits. As such, the affiants’ affidavits have no probative value or evidentiary weight in establishing the applicant’s continuous residence prior to July 1983.

3. [REDACTED] and [REDACTED] all attested to the applicant's residence in the United States since from November 1981, but provided no address for the applicant during the period in question.
4. The photographs submitted have no identifying evidence that could be extracted which would serve to either prove or imply that the photographs were taken in the United States and during the requisite period.
5. The letter from [REDACTED] has little evidentiary weight or probative value as it does not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, the reverend does not explain the origin of the information to which he attests. It must be noted that the letter from [REDACTED] also raises questions to its authenticity as the applicant indicated on his Form I-687 application that he was *not* affiliated with any religious organization during the requisite period.

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).

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 (5th ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991). Given the credibility issues arising from the documentation provided by the applicant, absence of a plausible explanation, 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.