



U.S. Citizenship
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Services

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[REDACTED]

FILE:

MSC 02 197 64718

Office: EL PASO

Date:

DEC 24 2009

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:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. 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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, El Paso, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel asserts that the applicant is unable to provide additional evidence. Counsel states that the applicant lost the contents of his wallet in a robbery, and therefore, he cannot be expected to provide additional documents. Counsel supplemented the appeal with additional evidence, including a detailed police report, relating to a robbery of the applicant on March 19, 2003.

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 (INA) 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 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.

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 regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

On September 16, 2003, the director issued a notice of intent to deny (NOID) informing the applicant of the Service's intent to deny his LIFE Act application because he had failed to establish the requisite continuous residence. The director noted that the applicant failed to submit sufficient evidence to support his application. The applicant was granted thirty days to respond to the notice. In response to the NOID the applicant submitted a letter stating that he has submitted all the documents that he has.

In the Notice of Decision, dated March 4, 2004, the director denied the instant application based on the reasons stated in the NOID. The director noted that the applicant responded to the NOID, but stated only that he did not have additional evidence.

On appeal, counsel states that the applicant cannot be expected to produce additional evidence because, when the applicant was on his way to the immigration office for his interview, he was robbed and his wallet with his money and his documents were stolen.

Counsel's assertion that the applicant cannot provide additional evidence to establish the requisite continuous residence is not persuasive. Counsel states that irreplaceable documents were in the applicant's wallet when he was robbed and are crucial to establish the applicant's case. Counsel, however, does not provide any information or a list and description of the documents. It cannot be discerned, therefore, whether duplicates could be obtained for these documents, whether the information in the documents could be reconstructed, or whether the documents had probative value. However, while the record indicates that the applicant was robbed and his wallet was stolen, without more, CIS cannot accept counsel's mere assertions that the documents that were in the applicant's wallet cannot be reproduced and are critical to establish the applicant's case. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The AAO will, therefore, determine this appeal based on the record of proceeding.

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 during the requisite period. The applicant submitted an employment letter, two affidavits, and three receipts as evidence to establish the requisite continuous residence in support of his Form I-485 application.

The AAO has reviewed the entire record. Here, the submitted evidence is not relevant, probative, and credible.

Employment Letter

The applicant submitted a notarized letter of employment from [REDACTED], dated March 11, 2002, stating that the applicant worked with him from February 1986 until November 1988. It is noted that [REDACTED] does not indicate the position in which the applicant was employed.

Pursuant to 8 C.F.R. § 245a.2(d)(3)(i), letters from employers should be on employer letterhead stationery. The letter of employment failed to provide the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the affiant also failed to declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

Affidavits & Letters

The applicant submitted the following:

1. An affidavit from [REDACTED] stating that the applicant lived in her apartment from February 1986 through November 1988, and that the applicant paid part of the rent, utilities, and food. It is noted that the affiant does not attest to the applicant's continuous residence prior to February 1986.
2. An affidavit from [REDACTED] stating that the applicant rented a room at his house from September 1981 until December 1985. [REDACTED] states further that he had only seen the applicant every six months. This affidavit, is therefore, not probative of the applicant's continuous residence during any part of the requisite period.

In addition, the applicant provided three money order receipts. Two of the receipts were issued in October 1986. The third receipt does not have a clear date. The applicant does not provide any additional documentation which could establish his continuous residence in the United States prior to February 1986.

Contrary to counsel's assertion, the applicant has failed to submit sufficient credible evidence to establish his continuous residence in the United States during the requisite period. The evidence submitted does not, individually or cumulatively, establish the applicant's continuous residence throughout the requisite period.

Also, as stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affiants included any supporting documentation of the affiant's presence in the United States during the requisite period. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification.

The applicant has, therefore, failed to establish that he resided in continuous unlawful status in the United States from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act. Given this, he 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.