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U.S. Citizenship
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FILE:

MSC 02 250 65478

Office: NEW YORK

Date: **DEC 31 2008**

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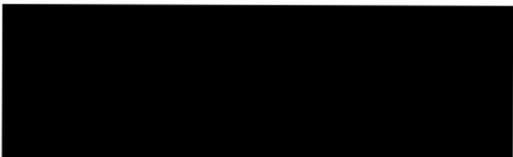
Applicant:



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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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: On September 20, 2007, the Director, New York, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application, finding that the applicant failed to submit sufficient evidence to establish his continuous presence in the United States during the statutory period. The director noted that the affidavits the applicant submitted were not credible or amenable to verification. The director also noted inconsistencies between the documentation in the record and the applicant's oral testimony during his interview. Finally, the director indicated that, based on the documentation in the record, it appeared that the applicant did not enter the United States until sometime in 1990.

On appeal, counsel for the applicant asserts that the evidence already in the record is sufficient to meet the applicant's burden of proof in this case.

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence 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. See 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. 245a.11(b). The applicant 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 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony. 8 C.F.R. 245a.12(f). Affidavits that indicate specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits that provide generic information.

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.

A LIFE Legalization applicant must also provide evidence establishing that, before October 1, 2000, he or she was a class member applicant in a legalization class-action lawsuit. *See* 8 C.F.R. 245a.14. In this case, the record reflects that the applicant applied for such class membership by submitting a "Form for Determination of Class Membership in *CSS v. Meese* [CSS lawsuit]," accompanied by a Form I-687 "Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act)," dated June 18, 1990.

On June 7, 2002, the applicant submitted the current Form I-485, Application to Register Permanent Residence or Adjust Status. On July 20, 2004, the applicant appeared for an interview based on the application.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden and establish by a preponderance of the evidence, that his claim of entry into the United States before January 1, 1982, and continuous residence in the United States during the requisite period is probably true.

The documentation that the applicant submits in support of his claim consists of numerous letters from friends and acquaintances of the applicant, three employment verification letters, and a letter from Harlem Hospital Center.

The letters from [REDACTED] can be given minimal weight as evidence of the applicant's required continuous residence as they contain minimal details regarding any relationship with the applicant during the requisite period. Although [REDACTED] asserts that she has known the applicant since 1984 and [REDACTED] since 1983, they fail to indicate any personal knowledge of the applicant's claimed entry to the United States during that year and also fail to provide sufficient relevant details regarding the circumstances of the applicant's residence during the statutory period. Lacking such relevant detail, the statements can be afforded only minimal weight as evidence of the applicant's continuous residence in the United States for the requisite period.

The letter from Harlem Hospital Center dated March 12, 1990, lists the applicant's address and states that the applicant is a registered patient at the facility and is known to the clinic. The letter indicates nothing more, including the date the applicant first became a patient at the facility and what, if any, subsequent dates the applicant was treated there. The letter also fails to indicate what records were consulted or to submit photocopies of these records. Given this lack of detail and authentication, the letter can be given minimal weight as evidence of the applicant's continuous residence or physical presence in the United States during the requisite period.

The employment verification letters from [REDACTED] Cabinet Making Shop, Superior Structures Builders, and Rosa Construction Corp. can be given minimal evidentiary weight as they fail to **comply with the regulatory requirements at 8 C.F.R. § 245a.2(d)(3)(i)**. Specifically the employers do not provide the applicant's address at the time of employment, show periods of layoff, or declare whether the information was taken from company records, or 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.

Although the applicant has submitted several letters and affidavits in support of his application, he has not provided any contemporaneous evidence of residence in the United States during the duration of the requisite period. 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 affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period.

The record of proceedings contains other documents, including a Social Security statement indicating income earned from 1990 to 2002, a 2003 Internal Revenue Service (IRS) Form W-2, an employment verification letter dated November 12, 2002, from Hellas Stone, Inc., two pay stubs from Hellas Stone dated in 1994, an application for a driver's learner's permit dated May 8, 1990, a photocopy of a passport issued on November 6, 1989, by the Peruvian Consulate in New York, and a letter from [REDACTED] stating that the applicant began living in his apartment in March 1990. This evidence is dated after or refers to events that occurred after May 4, 1988, and does not address the applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have first entered the United States without inspection on October 22, 1981, and to have resided for the duration of the requisite period in New York. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has failed to do so. In this case, his assertions regarding his entry are not supported by any credible evidence in the record.

Having examined each piece of evidence, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has not shown by a preponderance of the

evidence he entered into the United States before January 1, 1982, and that he resided continuously in an unlawful status for 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. Given the applicant's reliance upon documents with minimal probative value, the applicant has failed to establish continuous residence in an unlawful status in the United States for the requisite period, as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence 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.