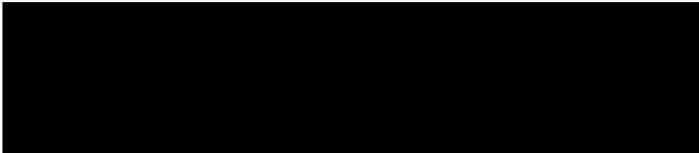


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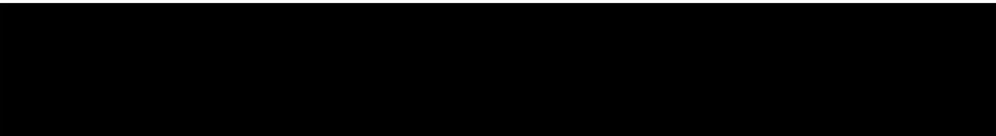
FEB 20 2008

IN RE: 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 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.

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, Atlanta, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to establish that he entered the United States before January 1, 1982, and that he resided continuously in the United States in an unlawful status since that date through May 4, 1988.

On appeal, applicant asserts that he has resided in the United States since before January 1, 1982, through May 4, 1988. He submits additional evidence and requests that his application be reconsidered.

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 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 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.

In the Notice of Intent to Deny (NOID), dated January 21, 2005, the director stated that evidence was insufficient to establish that the applicant entered the United States prior to January 1, 1982, and continuously resided in an unlawful status since such date through May 4, 1988. The director granted the applicant thirty (30) days to submit additional evidence. The record reflects that no additional evidence was submitted. In the Notice of Decision (NOD), dated March 10, 2005, the director determined that the applicant failed to meet his burden of proof and denied the instant application.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered the United States prior to January 1, 1982, and continuously resided in an unlawful status through the duration of the requisite period. Here, the evidence is not sufficient.

On appeal, the applicant submitted an April 22, 2002, sworn statement by [REDACTED]. The affiant stated that the applicant lived with him in Dallas, Texas, from 1981 to 1990. He stated that the applicant helped him pay the rent. The affiant also provided a February 13, 2005, sworn and subscribed affidavit. In this affidavit, the affiant stated that the applicant lived in Dallas, Texas, every year since before 1982. The affiant provided a proof of his identity, address of residence and telephone number. Although not required, the affiant did not include any supporting documentation to corroborate his claim, such as a rental agreement or household bills which would bolster the affiant's claim. Moreover, the fact that the applicant would have been only 10 years old in 1981 seriously brings into question the credibility of the affiant.

The applicant also submitted a May 1, 1990, letter by [REDACTED], of [REDACTED]. The affiant stated that the applicant worked on the farm planting and harvesting truck crops from March 1981 to August 1989. The affiant provided the applicant's address at the time of employment. The affiant failed to show periods of layoff, 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 as required under 8 C.F.R. § 245a.2(d)(3)(i).

The applicant has not provided any credible, contemporaneous evidence of residence in the United States during the duration of the requisite period. The absence of sufficiently detailed and consistent

supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this claim. 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, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through the duration of the requisite period.

Beyond the decision of the director, the record reflects that on December 4, 1992, the applicant was arrested and charged with *illegal entry* into the United States in violation of 8 U.S.C. § 1325, a misdemeanor in the United States District Court, Western District of Texas (Case [REDACTED]). On December 7, 1992, the applicant pleaded guilty to *illegal entry* and was sentenced to a fine of \$10.00 and imprisonment for 30 days. This single misdemeanor conviction does not render the applicant ineligible pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a).

The record also indicates that the applicant was convicted of *alien smuggling* on January 6, 1993. In the absence of court documents, the AAO cannot make a finding on this matter.

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.