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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 03 192 61456

Office: NEW YORK

Date:

FEB 25 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, New York City. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The district director denied the application on the ground that the applicant failed to respond to a request for evidence to establish that he had entered the United States before January 1, 1982, and had resided continuously in the United States from then through May 4, 1988.

On appeal, the applicant asserts that he did respond to the request for evidence and provides copies of the evidence previously submitted.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. See section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

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 its amenability to verification. See 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 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.

The applicant filed his application for permanent resident status under the LIFE Act (Form I-485) on April 10, 2003. In the Notice of Intent to Deny (NOID), dated February 3, 2005, the director noted the applicant's claim to have entered the United States in October 1981, cited the only two documents in the record showing the applicant to have resided in the United States during the 1980s – (1) an attestation from the Moroccan Consulate in Washington, D.C. dated January 17, 1992, stating that the applicant was issued a passport in Casablanca with a five-year validity period on January 23, 1981, which was extended for another five years by the Consulate General in New York on March 12, 1986, and (2) an undated letter from the manager of a restaurant in Staten Island, New York, Ribs & More, stating that the applicant was employed on a cash basis from February 1983 to October 1986 – and pointed out that neither of these documents provided any evidence that the applicant resided in the United States prior to October 1983. The director granted the applicant thirty (30) days to submit additional evidence.

On April 12, 2005 the director denied the application on the ground that the applicant did not respond to the NOID and therefore had failed to establish that he entered the United States before January 1, 1982 and had resided continuously in the United States from then until May 4, 1988.

The applicant filed a timely appeal, asserting that he also responded in a timely manner to the NOID. In support of that claim the applicant submitted a copy of a cover letter dated March 3, 2005, referencing an enclosed affidavit from the applicant and four additional pieces of documentation, accompanied by photocopies of an express mail envelope from the applicant's counsel addressed to the New York District Office, stamped March 3, 2005, and a U.S. Postal Service receipt of the same date for the amount of \$13.65. The personal affidavit and four documents cited in the cover letter of March 3, 2005 were resubmitted with the appeal.

In his affidavit, dated March 2, 2005, the applicant states that he flew from Italy to Mexico in August 1981, stayed in Mexico until October 1981, when he entered the United States illegally, then proceeded to New York, where he arrived in December 1981 and has remained ever since. The four additional documents cited in the cover letter include: (1) an affidavit from a resident of Mexico City, dated June 20, 1984, who states that the applicant resided at an address in that city from August to September 1981; (2) a notarized statement from a resident of Brooklyn, New York, dated February 22, 2005, who states that the applicant lived with his aunt at [REDACTED], in Brooklyn, from December 1981 to March 1982, and that he has known the applicant since that time; (3) a statement from a resident of Astoria, New York, dated January 12, 2005, indicating that he has known the applicant since 1984; and (4) a notarized statement from another resident of Astoria, New York, who indicates that he has known the applicant since 1982.

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 from before January 1, 1982 through May 4, 1988. The AAO concludes that he has not.

The applicant has not provided any contemporaneous documentation from the years 1981-1988 that demonstrates his residence in the United States during that time. The only evidence in the record of the applicant's presence in the United States prior to January 1, 1982, is the sworn statement in 2005 from Brooklyn resident [REDACTED], who asserts that the applicant resided with his aunt in Brooklyn

from December 1981 to March 1982. The statement is not supported by any documentation of Mr. [REDACTED] identity and his presence in the United States in the early 1980s, and provides little information about the basis of his recollection a quarter of a century later that his acquaintance with the applicant dated from December 1981, or the nature and extent of his interaction with the applicant during the rest of the 1980s. The other documentation of record, in addition to being woefully short on substance, offers no evidence whatsoever that the applicant was in the United States until 1982, at the earliest. The absence of detailed documentation to corroborate the applicant's claim of continuous residence and continuous physical presence for the requisite time periods seriously detracts from the credibility of his claim. In accordance with 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 its amenability to verification. Given the applicant's reliance upon documents with minimal probative value, he has failed to establish his continuous residence in an unlawful status in the United States from before January 1, 1982 through May 4, 1988.

Thus, the applicant has failed to establish his entry into the United States prior to January 1, 1982, and his continuous unlawful residence in the United States for the time period specified in section 1104(c)(2)(B)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A). Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

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