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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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L2.



FILE:

MSC 02 011 61203

Office: Los Angeles

Date FEB 27 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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. 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, Los Angeles, California, 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 failed to establish residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988 as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, the applicant reaffirms his claim of continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. The applicant asserts that he subsequently paid taxes on income he earned during the requisite period and includes copies of tax returns as well as copies of previously submitted documentation in support of his appeal.

An applicant for permanent resident status must establish 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. Section 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b).

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 under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982 to May 4, 1988, the submission of any other relevant document including affidavits is permitted pursuant to 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 "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 petitioner 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 or petition.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his or her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Act on or about October 2, 1991. At part #33 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant listed "[REDACTED]" in Long Beach, California from December 1980 to September 1985, "[REDACTED]" in Inglewood, California from October 1985 to November 1988 and "[REDACTED]" in Pasadena, California from December 1988 to September 1990. Further, at part #34 of the Form I-687 application where applicants were asked to list all absences from the United States since entry, the applicant listed a trip of three weeks to Peru to visit his ill wife in December 1983 and a trip to Peru for a family emergency from June 2, 1987 to July 4, 1987.

In support of his claim of continuous residence in the United States from prior to January 1, 1982, the applicant submitted two affidavits that are signed by [REDACTED] and [REDACTED] respectively. Both affiants stated that the applicant lived with them at [REDACTED] in Long Beach, California from December 1980 to September 1985. Although both affiants attested to the applicant's residence in this country from December 1980 to September 1985, neither provided any testimony that the applicant resided in this country after September 1985 through May 4, 1988.

The applicant included an affidavit signed by [REDACTED] who declared that he had personal knowledge the applicant resided in Gardena, California, and Los Angeles, California from 1982 up through November 26, 1990 the date the affidavit was executed. [REDACTED] noted that he and the applicant were neighbors in 1982 and they had maintained a close relationship over the years. However, [REDACTED] testimony that the applicant resided in Gardena, California at some point during that period from 1982 to November of 1990 conflicted with the applicant's testimony at part #33 of the Form I-687 application as the applicant did not include any

addresses of residence in Gardena, California but instead listed addresses in Long Beach, California, Inglewood, California, and Pasadena, California.

The applicant provided an original Rediform receipt dated December 22, 1981 that reflected his payment of \$25.00 to rent chairs for a party.

The applicant submitted a receipt dated August 6, 1987 for \$5.00 from a Texaco gas station at [REDACTED] in Torrance, California. However, the probative value of this receipt is negligible as the receipt contained no information relating to or identifying the applicant.

The applicant included a photocopy of the back of a postcard depicting Huascarán, a mountain in Yungay, Peru that is dated December 12, 1987 and contained a short note to the applicant. Nevertheless, the postcard did not contain any evidence, such as a postmark or cancellation mark, to demonstrate that the postcard had been mailed to the applicant in the United States on or about December 12, 1987.

The applicant provided an employment letter that is signed by [REDACTED]. [REDACTED] indicated that he was a supervisor at [REDACTED]'s Car Wash in Inglewood, California and declared that the applicant had been employed as a car washer at this enterprise from July 1985 to November 1987. While [REDACTED] attested to the applicant's employment for the stated period, he failed to provide the applicant's address of residence during his employment with [REDACTED]'s Car Wash as required under 8 C.F.R. § 245a.2(d)(3)(i). In addition, [REDACTED] failed to provide any testimony relating to the applicant's residence in the United States both prior to January 1, 1982 up through July 1985 and after November 1987 through May 4, 1988.

The applicant submitted an employment letter signed by [REDACTED] who stated that the applicant worked as a wood laborer for the Bell Wood Working Co., in Los Angeles, California from December 1987 to December 1989. However, [REDACTED] failed to provide the applicant's address of residence during his employment with this enterprise as required under 8 C.F.R. § 245a.2(d)(3)(i). In addition, [REDACTED] failed to attest to the applicant's residence in the United States prior to January 1, 1982 up through that date he purportedly began working for the Bell Wood Working Co., in December 1987.

The applicant included an affidavit that is signed by [REDACTED]. [REDACTED] asserted that the applicant resided at [REDACTED] in Inglewood, California from October 1985 until November 1988. [REDACTED] noted that he was the landlord of this property and had collected monthly rent from the applicant during this period. Regardless, [REDACTED] failed to provide any testimony regarding the applicant's residence in the United States since prior to January 1, 1982 until October 1985.

Subsequently, on October 11, 2001, the applicant submitted his Form I-485 LIFE Act application to the Immigration and Naturalization Service or the Service (now Citizenship and Immigration

Services or CIS). The applicant provided copies of previously submitted documentation in support of his claim of residence in the United States for the requisite period.

On the Form G-325A, Record of Biographic Information, which accompanied his Form I-485 LIFE Act application, the applicant indicated that he married his wife [REDACTED] in Peru on October 6, 1984. The applicant's admission that he was absent from the country when he was married in Peru on such date directly contradicted his prior testimony at part #35 of the Form I-687 application that he had only been absent from this country on two occasions during the period in question when he traveled to Peru for three weeks to visit his ill wife in December 1983 and then a subsequent trip to Peru for a family emergency from June 2, 1987 to July 4, 1987. The fact that the applicant failed to list this additional absence as well as the length and date of the absence further undermined the credibility of his claim of residence for the period in question.

On May 3, 2004, the district director issued a notice of intent to deny to the applicant informing him of CIS's intent to deny his application because he failed to submit sufficient evidence of continuous unlawful residence in the United States from prior to January 1, 1982. In addition, the district director determined that the Rediform receipt provided by the applicant was not credible because the receipt form had a revision date subsequent to the date written on the receipt. However, the district director failed to cite a specific source or authority to demonstrate that the format for the receipt in question had been revised after the date such receipt had been executed. Consequently, this document cannot be considered to have a negative impact upon the credibility of the applicant's claim of residence. The applicant was granted thirty days to respond to the notice.

The applicant submitted a statement in which he asserted that he had submitted sufficient evidence to establish residence in the United States in an unlawful status since prior to January 1, 1982. The applicant contended that he had even filed tax returns for that period from 1981 to 1988.

The district director determined that the applicant failed to submit sufficient evidence demonstrating his residence in the United States in an unlawful status for the requisite period and, therefore, denied the Form I-485 LIFE Act application on June 16, 2004.

On appeal, the applicant reaffirms his claim of continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. The applicant asserts that he subsequently paid taxes on income he earned during the requisite period and includes copies of federal tax returns for the years 1981 to 1988. However, a review of these tax returns reveals that these documents were filed with the Internal Revenue Service on September 24, 2003, rather than having been filed during the requisite period. As such, the tax returns cannot be considered as probative evidence supporting the applicant's claim of residence in the United States since prior to January 1, 1982.

The absence of sufficiently detailed supporting documentation and existence of conflicting and contradictory testimony all seriously undermine the credibility of both the applicant's claim of residence for the period in question and the credibility of the documents submitted in support of such claim. Pursuant to 8 C.F.R. § 245a.12(e), 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 failed to submit sufficient credible documentation to meet his burden of proof in establishing that he has resided in the United States since prior to January 1, 1982 to May 4, 1988 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.12(e) and *Matter of E-- M--*, 20 I&N Dec. 77.

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 May 4, 1988 as required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis

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