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FILE: [REDACTED]  
MSC 02 240 62605

Office: DALLAS

Date: FEB 29 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. 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, Dallas, Texas, 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 failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

On appeal, the applicant submits a letter and additional documentation.

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 states 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.

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).

While there is no specific regulation which governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements which affidavits are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information which an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to. See 8 C.F.R. § 245a.2(d)(3)(v).

Nevertheless, an affidavit not meeting all the foregoing requirements may still merit consideration as "any other relevant document" pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must be on employer letterhead stationery, if the employer has such stationery, and must include the following:

- (A) Alien's address at the time of employment;
- (B) Exact period of employment;
- (C) Periods of layoff;
- (D) Duties with the company;
- (E) Whether or not the information was taken from official company records; and
- (F) Where records are located and whether the Service may have access to the records.

The regulation further allows that if official company records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and explaining why such records are unavailable may be submitted in lieu of meeting the requirements at (E) and (F) above.

Here, the submitted evidence is not sufficiently relevant, probative, and credible.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence throughout the application process:

A notarized affidavit, dated April 4, 1990, from \_\_\_\_\_ stating that the applicant was absent from the United States from July 3, 1987, to August 2, 1987, due to a family emergency.

- A notarized affidavit, dated April 4, 1990, from [REDACTED] stating that he had first-hand knowledge of the applicant's continuous residence in the United States from 1981 to 1984.

A notarized affidavit, dated April 4, 1990, from [REDACTED], stating that he had first-hand knowledge of the applicant's continuous residence in the United States from 1984 to 1987.

- A notarized affidavit, dated April 4, 1990, from [REDACTED] stating that he had knowledge of the applicant's continuous residence in the United States since 1987.
- A notarized affidavit, dated April 7, 1990, from [REDACTED], residing at [REDACTED], Riverside, California, stating that he was the applicant's roommate.

In a Notice of Intent to Deny (NOID), dated January 27, 2005, the district director determined that the applicant had failed to submit credible and verifiable evidence demonstrating his continuous unlawful residence in the United States from prior to January 1, 1982, through May 4, 1988. The director granted the applicant thirty (30) days to submit additional evidence. In response, the applicant submitted documentation dated in or after 1990, as well as:

Photocopies of receipts bearing no name as to the recipient.

- Photocopies of correspondence mailed to the applicant in the United States with illegible post-mark dates.

A letter, dated May 25, 2002, from [REDACTED], Vice President of the Metroplex Organization of Muslims in North-Texas (MOMIN) stating that the applicant had been known to him since 1982, when he (the applicant) was a resident of California.

- A letter, dated January 3, 1990, from [REDACTED] Managing Director of Falcon International, Palm Desert, California, stating that the applicant had been employed as a Sales Manager from March 22, 1986, to November 21, 1989.

In a Notice of Decision (NOD), dated June 15, 2005, the district director denied the application based on the reasons stated in the NOID. The applicant filed a timely appeal from that decision on July 13, 2005.

On appeal, the applicant resubmits documentation previously provided. The applicant also submits a letter asserting that due to "technical errors" and "attorney negligence" his application was "wrongfully denied." The applicant claims that: he worked in the United States as a handyman from 1980 to 1990; his application was filed on April 9, 1990, not May 28, 2002; his attorney [REDACTED] never submitted originals of documentation that the applicant had provided for submission;

and, the “Federal Law of Statute of Limitations” should apply because the 12-year old affidavits he provided in 1990 had not been timely examined and the affiant’s had subsequently re-located.

The applicant’s claims are not persuasive. While the applicant’s Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act (Act), was filed in 1990, his Form I-485 was filed on May 28, 1992. And, although the Form I-485 indicates that [REDACTED]

Plano, Texas, assisted the applicant in the preparation of that form, there is no completed Form G-28, Notice of Entry of Appearance of Attorney or Representative, in the record indicating that [REDACTED] was ever authorized under 8 C.F.R. § 292.1 or § 292.2 to represent the applicant. Furthermore, the applicant has been afforded several opportunities over time to submit any evidence he deemed appropriate in support of his application. Finally, other than the photocopies of receipts and correspondence provided, the remaining documents contained in the record are originals.

Upon review of all the evidence in the record, the AAO determines that the submitted evidence is not sufficiently relevant, probative, and credible to meet the applicant’s burden of proof.

Although the applicant has submitted several 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. The affidavits from [REDACTED] and [REDACTED] are fill-in-the blank documents, contain little (or no) detail as to the basis for the affiants’ acquaintances with the applicant, and do not provide contact telephone numbers for the affiants. The letter from [REDACTED] is not notarized and does not provide all of the addresses where the applicant resided throughout the period of the affiant’s acquaintance with the applicant. Furthermore, the employment letter is not notarized, does not provide the applicant’s address(es) during the period of his employment, the periods of layoff (if any), and whether or not the employment information was taken from official company records, or where records are located and whether CIS may have access to them.

The absence of sufficiently detailed documentation to corroborate the applicant’s claim of continuous residence for the entire requisite period detracts from the credibility of his 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 December 31, 1987.

The regulation at 8 C.F.R. § 245a.12(e) provides that “[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods.” Preponderance of the evidence is defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black’s Law Dictionary 1064 (5<sup>th</sup> ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

Given the insufficiency in the evidence, the AAO determines that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982, and resided in this country in an unlawful status continuously since that time through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b).

It is concluded that the applicant has 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.