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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:

[Redacted]
MSC 02 005 62198

Office: PHOENIX

Date:

JUL 22 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Phoenix, Arizona, 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 district director denied the application, finding that the applicant failed to meet his burden of proof that he resided continuously in the United States from prior to January 1, 1982, through May 4, 1988. The director stated that a review of the documentation submitted by the applicant showed no evidence that he resided continuously in the United States since prior to January 1, 1982. The director noted that the applicant's Form I-687, Application for Status as Temporary Resident, indicates that the applicant worked at [REDACTED], from an unspecified time in 1981 through October 1982 and that the address was not provided. The director states that the applicant's listing of residences in the United States omitted any reference to periods prior to November 1984. The director noted that the applicant provided a number of letters from individuals regarding their knowledge of you, but that none of them indicate that he lived or worked in the United States prior to January 1, 1982.

On appeal, the applicant asserts that he came to the United States on December 1981. He states that he came to the United States when he was 16 years old to have a better life. He states that he has no physical evidence of his entry but does have a memory of it. He submits a list of places he has resided and worked since December 1981.

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.

The record reflects that on October 5, 2001, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On December 2, 2002, the applicant appeared for an interview based on his application.

On December 12, 2002, the director sent the applicant a Notice of Intent to Deny (NOID) the application, finding that the applicant had not established that he met the continuous residence requirement stated in the law. The director noted that the applicant submitted a letter stating he initially entered the United States in January 1982, and that during his interview he confirmed this and testified that the first time he entered was on or about January 15, 1982. The director informed the applicant that he had 30 days from the receipt of the NOID to submit any information the applicant felt was relevant to his case.

In response, the applicant submitted an updated statement, indicating that he came to the United States on December 31, 1981. He stated that he waited for the New Year with two other people who crossed the border with him. He intended to travel to Paso Robles, California. He stated that on January 2nd, he found out that Paso Robles was farther away than he first thought and that it took him about one week to reach his destination. He stated that he had no idea that the Attorney General was so specific about the date of arrival. He stated that, if he had known, he would have explained in detail when he came, where he went, and how he came. He stated that he does not have physical evidence, only his recollection of the event. He stated that because the

director needed more proof, he went to Paso Robles and saw the daughter of the owner of the ranch where he worked in 1982. He stated that she recognized him and gave him her name and phone number in case the interviewing officer wanted to call. He provided the address and telephone number for [REDACTED].

On March 11, 2003, the director denied the application, finding that the applicant failed to meet his burden of proof that he resided continuously in the United States prior to January 1, 1982, through May 4, 1988. The director stated that the Service carefully reviewed the statement he submitted in response to the NOID. The director stated that a review of the documentation submitted by the applicant showed no evidence that he resided continuously in the United States since prior to January 1, 1982.

On appeal, the applicant reiterates that he came to the United States in December 1981. He states that he does not have physical evidence of when he entered the United States, but that he has his memory of his entry, of his hard work, of his family, and of his desire to remain in the country. He submits a list of the places where he has resided and worked since December 1981.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish his entry into the United States before January 1, 1982, and his continuous residence from January 1, 1982, through May 4, 1988.

The record of proceeding contains the following evidence relating to the requisite period:

Contemporaneous Evidence

- U.S. Postal Service Money Order receipts from the applicant in Los Angeles, California, to [REDACTED] in Michoacan, Mexico, dated in 1986 and 1987;
- Two Postal Service Forms 3806 addressed from the applicant in Los Angeles, California, to [REDACTED] in Michoacan, Mexico, postmarked in 1986 and 1987; and,
- Two electric bills addressed to [REDACTED], in San Bono, California, dated in 1987 and 1988.

This evidence is credible, but does not establish the applicant's continuous residence and physical presence from prior to January 1, 1982, through May 1, 1988. The electric bills are not relevant because they are not in the applicant's name. The money orders and Postal Service forms indicate that the applicant was in the United States in 1986 and 1987, but do not establish his continuous residence and physical presence during the required periods.

Employment Letters

- An undated, handwritten note from [REDACTED], of The Ranch. Mr. [REDACTED] simply states that the applicant worked from April 1981 to June 1982; [REDACTED]

- A letter dated June 10, 1993, signed by [REDACTED], of Classic Brass Collection. Mr. [REDACTED] states that the applicant was an employee from January 15, 1984, through May 25, 1985. He states that the applicant was a very hardworking person and a very helpful employee; and,
- A handwritten letter dated June 9, 1993, from [REDACTED] owner of E.U. Construction. Mr. [REDACTED] states that the applicant was employed on a part-time basis from May 1987, to June 1993. He states that sometime in the third week of June 1987, the applicant went home to Mexico and came back in the first week of July.

These employment letters can be given little evidentiary weight as they lack sufficient detail and fail to meet regulatory requirements. Specifically, the employers failed to provide the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the employers also failed to declare whether the information was taken from company records, and identify the location of such company records, and to state whether such records are accessible, or, in the alternative state the reason why such records are unavailable. They did not identify any periods of layoff and or list the applicant's duties with the companies in any detail.

Letters

- An undated, handwritten letter from [REDACTED], with translation. Mr. [REDACTED] states that he has known the applicant since 1982 and that they were friends after in 1986. He states that he also helped get the applicant a job in construction. The letter is not notarized. Mr. [REDACTED] fails to indicate any personal knowledge of the applicant's claimed entry to the United States. He fails to provide any details about the applicant's continuous residence or physical presence in the United States. In addition, Mr. [REDACTED] did not provide any evidence that he resided in the United States during the requisite period;

An undated, handwritten letter from [REDACTED] Ms. [REDACTED] states that she came to know the applicant in 1981 through the father of her two sons, [REDACTED] in Paso Robles. She states that they worked together at [REDACTED]. She states that the applicant and four other workers paid her weekly to make their lunch. She states that she and [REDACTED] lived together and on Fridays they would all get together after they got paid. She states that she is speaking on behalf of [REDACTED] who passed away in March of 1990. She states that she has become friends with the applicant, his wife, and their boys since then. The letter is not notarized. Ms. [REDACTED] fails to indicate any personal knowledge of the applicant's claimed entry to the United States. She fails to provide any meaningful details about the applicant's continuous residence or

physical presence in the United States. Finally, Ms. [REDACTED] did not provide any evidence that she resided in the United States during the requisite period.

These affidavits are not sufficiently detailed and are of little probative value, and therefore, can be given little evidentiary weight as evidence of the applicant's residence and presence in the United States for the requisite period. These affidavits suggest that the applicant was in the United States for the requisite time period, but lack any details that would lend credibility to the statements. They also fail to provide details regarding their claimed relationship with the applicant for over 15 years that would lend credibility to their statements. Regarding the applicant's claimed entry into the United States before January 1, 1982, there is no statement by anyone who claims to have personal knowledge of such entry. 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 affiants' presence in the United States during the requisite period.

The record of proceedings contains various other documents, including pay stubs from Shelter Roofing, Co. that contain no identifying information, an information request from the California Department of Motor Vehicles, and the birth certificate of the applicant's child, born on October 30, 1990, in San Bernardino, California. None of this evidence addresses 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 on December 31, 1981, and to have resided for the duration of the requisite period in Texas. 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.

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.