

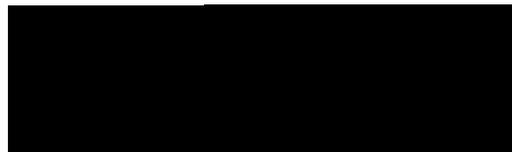
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: CHICAGO

Date:

JUL 25

MSC 02 236 62491

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, Chicago, Illinois, 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, counsel for the applicant submits a brief and states that the evidence submitted establishes the applicant's eligibility. Counsel submits some of the same evidence already submitted on appeal.

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 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 April 7, 2006, the director stated that the applicant failed to submit sufficient evidence demonstrating his continuous unlawful residence in the United States during the requisite period. The director noted that the applicant submitted various letters and affidavits, but he did not submit supporting primary or secondary evidence questionable letters and affidavits. The director granted the applicant thirty (30) days to submit additional evidence.

The record reflects that counsel's response to the NOID consisted of a legal brief and additional evidence. In the Notice of Decision, dated August 19, 2006, the director denied the instant application based on the reasons stated in the NOID.

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 during the requisite period. The record reflects that the applicant submitted a letter of employment, affidavits and letters attesting to his residence, and earnings and tax statements as evidence to support his Form I-485 application. Here, the submitted evidence is not relevant, probative, and credible.

Employment Letter

The applicant submitted a letter of employment from [REDACTED] Vice-president of [REDACTED] [REDACTED] dated June 17, 1990, stating that the applicant had been employed since June 1983.

Pursuant to 8 C.F.R. § 245a.2(d)(3)(i), letters from employers should be on employer letterhead stationery. The letter of employment is not on original company letterhead stationery. In addition, the affiant 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 affiant also failed to 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.

Affidavits & Letters

The applicant submitted the following letters and affidavits:

- 1) An undated letter from [REDACTED] a, Owner of [REDACTED], located at [REDACTED] Chicago, Illinois, stating that the applicant has been a good customer since 1981. [REDACTED] states that the applicant came to the store on several occasions. It is noted that [REDACTED] letter is undated, therefore, it cannot be determined during what period he was acquainted with the applicant or when the applicant visited his store. Also, [REDACTED] does not state whether the applicant has been a continuous resident since January 1, 1982.
- 2) Three form affidavits from [REDACTED] sworn to on June 27, 1990, attesting to knowing the applicant since June 1981, and from [REDACTED] a and [REDACTED] n, both sworn to on June 29, 1990, attesting to knowing the applicant since June 1983. The three affiants also state that the applicant has been a continuous resident since that time, and that they know the applicant to be of good moral character. However, the affiants do not state how they date their acquaintance with the applicant, and whether and how, if at all, they maintained a relationship with the applicant. Also, the affiants do not provide a basis for their conclusion that the applicant resided continuously in the United States since their acquaintance with him.
- 3) An affidavit from [REDACTED], sworn to on June 26, 1990, stating that the applicant resided with him at Golf Terrace, Displaines (DesPlaines,) Illinois, from February 1981 until June 1983. However, [REDACTED] does not state whether the applicant has been a continuous resident since January 1, 1982 or whether he maintained a relationship with the applicant since June 1983.
- 4) A letter from [REDACTED] r of St. Agnes Church, located at [REDACTED] A [REDACTED] dated June 19, 1990, stating that the applicant has been a member of the Parish since 1982 and a regular church goer since that time. However, [REDACTED] does not provide any details of the applicant's membership, church attendance, or any supporting documentation, such as membership records.
- 5) A letter, dated June 23, 1990, from [REDACTED] stating that the applicant has been a patient of his clinic since March 10, 1983. [REDACTED] however, does not state how frequently the applicant visited the clinic, and does not provide any supporting documentation.
- 6) An undated letter from [REDACTED] located at 4 [REDACTED] [REDACTED] stating that he has known the applicant in the United States since July 1983, and that the applicant has been a good customer. [REDACTED] a states that the applicant purchased merchandise at his store on several occasions, and he spoke with the applicant several times. It is noted that [REDACTED] s letter is undated, therefore, it cannot be determined during what period he was acquainted with the applicant or when the applicant visited his store. Also, [REDACTED] a does not state how frequently he met the applicant or whether the applicant has been a continuous resident since July 1983.

7) An affidavit from [REDACTED] sworn to on June 28, 1990, stating that the applicant resided with him at [REDACTED], Illinois, from July 1983 until December 1986. However, [REDACTED] does not state whether the applicant has been a continuous resident since January 1, 1982 or whether he maintained a relationship with the applicant since December 1986.

8) A form affidavit from [REDACTED], sworn to on June 26, 1990, stating that the applicant resided at [REDACTED], from January 1987. However, the affiant does not state how she dates her acquaintance with the applicant, and whether and how, if at all, she maintained a relationship with the applicant.

The applicant also submitted a U.S. Postal mail receipt, dated September 9, 1986, addressed to him in Chicago, Illinois, and a 1988 Wage and Tax Statement from Doc Weeds Restaurant.

Contrary to counsel's assertion, the applicant has not submitted sufficient evidence to support his claim of continuous residence in the United States since prior to January 1, 1982, and continuous unlawful residence through May 4, 1988. The applicant has submitted six affidavits and four letters in support of his application; however, as stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The applicant has not provided any contemporaneous evidence of residence in the United States during the duration of the requisite period. Although not required, none of the affidavits or letter writers included any supporting documentation of the affiant's presence in the United States during the requisite period. None of the them indicated how they dated their acquaintance with the applicant, how they met the applicant or how frequently they saw the applicant. In that the applicant claims that he has resided in the United States since 1981, it is reasonable to expect that he would be able to provide reliable contemporaneous evidence in support of his application. For example, the applicant was 15 years old, and of school age, when he claimed he first entered the United States, however, the applicant has not provided documentation such as school records which should be obtainable. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously 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 May 4, 1988.

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.