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U.S. Citizenship
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FILE: [REDACTED]
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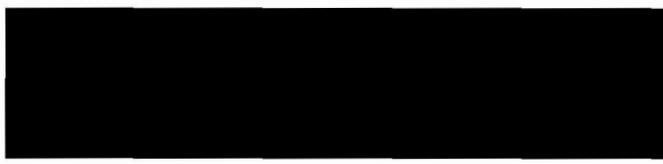
Office: CHICAGO

Date: JUN 10 2008

IN RE: Applicant: [REDACTED]

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

Robert F. 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 on appeal. The appeal will be sustained.

The district director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

On appeal, counsel argues that the director failed to consider all the evidence presented under the preponderance of the evidence standard. Counsel asserts that the applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982, through May 4, 1988.

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. 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 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).

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:

- Several cashier’s checks dated during 1982 and on January 12, 1988 issued by the Des Plaines National Bank in Illinois.

- Two license applications for 1986-1987 from the City of Des Plaines (Illinois), which listed the applicant's address as [REDACTED]
- A notarized employment affidavit from [REDACTED] of Niles, Illinois, who indicated that the applicant was in his employ as a busboy at [REDACTED] Restaurant from November 1981 to 1985.
- Wage and tax statements for 1984 and 1985 from [REDACTED] Restaurant in Niles, Illinois, which listed the applicant's address as [REDACTED], Des Plaines, Illinois.
- Two letters and a notarized employment affidavit from [REDACTED], owner of [REDACTED], No.2 in Niles, Illinois, who attested to the applicant's employment as a busboy from 1986 to 1990.
- Wage and tax statements for 1985, 1986, 1987 and 1988 from [REDACTED] in Des Plaines, Illinois, which listed the applicant's address as [REDACTED], and [REDACTED], Des Plaines, Illinois.
- Three earnings statements for the periods ending April 12 and 19, 1987, and November 8, 1987.
- A notarized affidavit from an uncle, [REDACTED] of Des Plaines, Illinois, who attested to the applicant's residences in Des Plaines, Illinois from 1981 to 1983 at [REDACTED]; 1983 to 1987 at [REDACTED]; and since 1987 to 1990 at [REDACTED].
- An additional affidavit notarized July 1, 1993, from [REDACTED], who indicated that he resided at [REDACTED] Des Plaines, Illinois from August 1986 to August 1989, and attested to the applicant residence at this residence during that period of time. The affiant indicated that he helped support the applicant during his unemployment between December 1987 and November 1988.
- Notarized affidavit from an uncle, [REDACTED] and a brother, [REDACTED] of Des Plaines, Illinois, who indicated that they resided at [REDACTED], Des Plaines, Illinois from August 1986 to August 1989, and attested to the applicant's residence at this address during that period of time. The affiants indicated that they helped support the applicant during his unemployment between December 1987 and November 1988.
- Notarized affidavits from an uncle, [REDACTED] of Des Plaines, Illinois, who attested to the applicant's residence in the United States since 1981 and to his absence from November 1987 to December 16, 1987. The affiant indicated that he resided at [REDACTED], Des Plaines, Illinois from August 1986 to August 1989, and attested to the applicant residence at this residence during that period of time. The affiant indicated that he helped support the applicant during his unemployment between December 1987 and November 1988.
- A letter dated October 28, 2003, from [REDACTED], pastor of St. Mary Church in Des Plaines, Illinois, who indicated that the applicant and his spouse have been a member of the parish since 1982.
- A notarized affidavit from a brother-in-law, [REDACTED] of Des Plaines, Illinois, who attested to the applicant's residences in Des Plaines from October 1981 to October 1983 at [REDACTED]; October 1983 to January 1987 at [REDACTED]; and since January 1987 at 1498 Perry Street. The affiant asserted that he has known the applicant since they were children in Mexico and "I have seen him often since my sister and I are close."
- A notarized affidavit from [REDACTED]z of Wheeling, Illinois, who attested to the applicant's residences in Des Plaines, Illinois from October 1981 to October 1983 at [REDACTED]; October 1983 to January 1987 at [REDACTED]; and since January 1987 at [REDACTED]. The affiant indicated that he first met the applicant in 1981 when the applicant was residing with relatives at [REDACTED], and has remained good friends with the applicant since that time.
- A notarized affidavit from [REDACTED] of Wheeling, Illinois, who attested to the applicant's residences in Des Plaines, Illinois from October 1981 to October 1983 at [REDACTED]

October 1983 to January 1987 at [REDACTED] and since January 1987 at [REDACTED]. The affiant asserted that she met the applicant at a family gathering in 1985 and has remained good friends with the applicant since that time.

- A notarized affidavit from [REDACTED] of Des Plaines, Illinois, who attested to the applicant's residences in Des Plaines from October 1981 to October 1983 at [REDACTED] October 1983 to January 1987 at [REDACTED] and since January 1987 at [REDACTED]. The affiant asserted that the applicant has been a neighbor and friend since his arrival in the United States in 1981.

It is noted that the applicant submitted several earnings statements issued during 1982 from [REDACTED] Restaurant and a cashier's check issued on December 4, 1981. These documents, however, have no probative value as the applicant's name is not listed.

The director, in issuing his Notice of Intent Deny on January 26, 2006, advised the applicant that attempts were made to contact all of the individuals who signed affidavits on his behalf, but most of the telephone numbers were no longer in service or did not belong to the individual or company. The applicant was also advised that he had provided information that was contradictory. Specifically: 1) the applicant claimed to have been absent from the United States from November 1987, to December 1987; however, the record reflects that he had married his spouse in Mexico on June 24, 1989; and 2) the letter from [REDACTED] attested that the applicant and his spouse had been parishioners since 1982; however, the applicant was not married until June 24, 1989. The director noted the applicant that the check stubs and wage and tax statements did not cover each and every month and years as required.

The applicant was granted 30 days in which to respond to the notice; however, no response was received prior to the issuance of the director's Notice of Decision issued on March 14, 2006.

The applicant's absence in 1989 is irrelevant as it occurred subsequent to the requisite period. It is reasonable to conclude that affiants who had provided documents over 13 to 15 years ago are no longer available at the same telephone number or address listed as a point of contact in an affidavit or letter. A variety of circumstances including relocation, business closure, or death could readily account for a failure to contact affiants. Further, contrary to the director's opinion, there is no requirement in the law or in the applicable regulations requiring check stubs and wage and tax statements to be provided for "each and every month and years."

The record reflects that the applicant's response was received by the district office on March 27, 2006. The applicant's response will be considered on appeal. The applicant, in response, asserted that except for two brief visits to Mexico from November 18, 1987, to December 16, 1987, and to get married on June 24, 1989, he has continuously resided in the United States since 1981. The applicant submitted copies of documents that were previously provided along with the following:

- An additional affidavit from [REDACTED], who attested to the applicant's arrival in the United States in 1981, and that he and the applicant resided at his uncle's, [REDACTED], home. The affiant indicated that the applicant resided with him until 1997.
- An additional affidavit from [REDACTED] who attested to the applicant's arrival in the United States in 1981, and that the applicant resided with him for the first three years. The affiant indicated that he assisted in the applicant's support from December 1987 to November 1988.
- An affidavit from an acquaintance, [REDACTED] of Des Plaines, Illinois, who attested to the applicant's residence in the United States since 1981.

The applicant, asserted, in pertinent part:

This affidavit will clarify a misstatement in the letter from St. Mary's Church dated October 28, 2003 in which it is not clear who was the parishioner and for what periods of time. What they meant to say was that I as a single person attended St Mary's as a parishioner while I was single and before I married my wife in Mexico in 1989, and after my wife came to the United States we were parishioners as husband and wife.

The applicant's statement has been consistent, however, [REDACTED] letter has little evidentiary weight or probative value as it does not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, the pastor does not explain the origin of the information to which he attests.

It is noted that the relatives' statements attesting to the applicant's residence at [REDACTED] from August 1986 to August 1989 are at variance with what the applicant's claimed on his Form I-687 application. On the Form I-687 application, the applicant claimed residence at [REDACTED] from 1983 to 1987 and at [REDACTED] from 1987 to November 1990. However, because the addresses are in such close proximity to each other that it does not raise significant issue to the legitimacy of the applicant's residence during the periods in question.

The relatives also attested to the applicant's unemployment from December 1987 to November 1988. This appears to be consistent with the wages reported on the 1988 wage and tax statement and does not negate the applicant's claim to continuous residence.

In this instance, the applicant submitted evidence, including contemporaneous documents, which tends to corroborate his claim of residence in the United States during the requisite period. The district director has not established that the information in this evidence was inconsistent with the claims made on the application, or that it was false information. As stated in *Matter of E--M--*, supra, when something is to be established by a preponderance of evidence, the applicant only has to establish that the asserted claim is probably true. That decision also points out that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. The documents that have been furnished may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

The documentation provided by the applicant supports by a preponderance of the evidence that the applicant satisfies the statutory and regulatory criteria of entry into the United States before January 1, 1982, as well as continuous unlawful residence in the country during the ensuing time frame of January 1, 1982 through May 4, 1988, as required for eligibility for legalization under section 1104(c)(2)(B)(i) of the LIFE Act.

Accordingly, the applicant's appeal will be sustained. The district director shall continue the adjudication of the application for permanent resident status.

ORDER: The appeal is sustained.