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FILE: MSC 03 077 63163

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Date: JUN 27 2008

IN RE: Applicant:

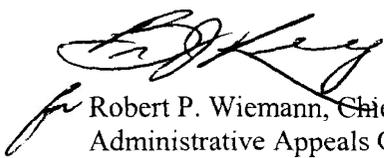


APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. 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, 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 states that he has had difficulty remembering dates and locating information in support of his application. The applicant does not submit additional evidence 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 July 6, 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 8 affidavits in support of his application attesting to his residence in the United States. However, seven of the affiants could not be contacted, and the one affiant who was contacted could not verify the contents of his affidavit. The director determined that the evidence submitted lacked credibility and probative value. The director granted the applicant thirty (30) days to submit additional evidence.

The record does not reflect that the applicant responded to the NOID. In the Notice of Decision, dated September 13, 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 three letters of employment and six affidavits as evidence to support his Form I-485 application. Here, the submitted evidence is not relevant, probative, and credible.

Employment Letters

The applicant submitted three letters of employment notarized on July 11, 1990. Two notarized letters are signed by [REDACTED], one stating that the applicant had been employed at [REDACTED] Landscaping on landscape and maintenance crews from April 1, 1984 to May 1, 1987, and one stating that the applicant had been employed at [REDACTED]'s Landscaping from May 1, 1987 to May 1, 1989, as a laborer. The other letter is from Rosedale Nurseries, Inc., and signed by [REDACTED], and states that the applicant had been employed as a laborer from May 15, 1983 to March 1, 1984. It is noted however, that the letters failed to provide the applicant's address at the time of employment, show periods of layoff, 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 as required under 8 C.F.R. § 245a.2(d)(3)(i).

The applicant also submitted a letter of employment in affidavit form signed by [REDACTED], and notarized on July 13, 1990. Mr. [REDACTED] attests that the applicant had been employed as a Landscaper in the Dallas area from November 1981, through April 1983. It is noted however, that the applicant, who was born on September 28, 1967, had just turned 14 years old in November 1981. [REDACTED], nevertheless, claimed he employed the applicant at that time. This casts doubts on whether the applicant was ever employed as he claimed. In addition, this affiant also failed to show periods of layoff, 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 as required under 8 C.F.R. § 245a.2(d)(3)(i).

Affidavits

The applicant submitted a sworn form affidavit from [REDACTED] attesting to having known the applicant in Texas since February 1982. The affiant states that the applicant has lived with him and his family, however, she does not state whether the applicant has been a continuous resident of the United States during the requisite period.

The applicant also submitted two form affidavits from [REDACTED], one attesting that he has known the applicant since March 1982, and the other attesting to having known the applicant in Texas since February 1982. The affiant states in one of the affidavits that the applicant has either lived with him or next door to him, however, he does not state whether the applicant has been a continuous resident of the United States during the requisite period.

The applicant also submitted a sworn affidavit from [REDACTED] attesting that he has known the applicant in the United States since April 1982. However, as with the other affiants, the affiant does not state whether he has known the applicant prior to January 1, 1982, and he does not state whether the applicant has been a continuous resident of the United States during the requisite period.

Although the applicant has submitted employment letters and affidavits in support of his application, the applicant has not provided any contemporaneous evidence of residence in the United States during the duration of the requisite period. 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 affiant's presence in the United States during the requisite period. None of the affiants indicated how they dated their acquaintance with the applicant, how they met the applicant or how frequently they saw the applicant. 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. In that the applicant claims that he has resided in the United States since December 1981, it is reasonable to expect that the applicant would be able to provide some contemporaneous evidence in support of his application. 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.