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U.S. Citizenship  
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FILE:



Office: CHICAGO

Date:

**MAR 03 2008**

MSC 02 255 61469

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 for the requisite statutory time period.

On appeal, counsel asserts that the director failed to consider two pieces of evidence substantiating the applicant's residence for the applicable time period. Counsel provided copies of previously submitted evidence for consideration.

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 on or about February 8, 2005, the director stated that the applicant failed to submit evidence demonstrating his continuous unlawful residence in the United States from prior to January 1, 1982, through May 4, 1988. The director listed the following affidavits as evidence that had been considered:

An affidavit from the applicant's previous employer, Inverness Golf Club, stating the applicant was an employee from 1985 through 1993. The director noted that this employer was able to verify the applicant's employment from old company records.

An affidavit from [REDACTED] stating the applicant had been a patient from 1987 to 1990.

An affidavit from [REDACTED] M.D., stating the applicant had been a patient from May 1987 through October 1990.

An affidavit from the applicant's previous employer, "Old Chop," stating the applicant had been a busboy from December 1981 through September 1985. The director noted that the employer had not provided a contact number.

The director observed that he had taken the affidavits and other evidence into consideration but found that the evidence did not establish by a preponderance of the evidence that the applicant met the criteria to adjust status under the LIFE Act. The director granted the applicant thirty (30) days to submit additional evidence.

Counsel, in a March 14, 2005 response to the director's NOID, submitted the following documents:

Internal Revenue Service (IRS) Forms W-2, Wage and Tax Statement, issued to the applicant in the years, 1985, 1986, 1987, 1988, 1989, 1990, 1991, and 1992 by his employer, Inverness Golf Club. Counsel also submitted letters from employees of the Inverness Golf Club confirming the applicant's employment during this time period.

A letter from [REDACTED] dated October 29, 1990 stating the applicant whose address is [REDACTED] in Palatine, Illinois had been a patient of the practice since August 1987. Counsel also submitted a March 10, 2005 letter from the successor dental

practice noting that it had maintained some of [REDACTED] records but due to space limitations had not kept all records and could not locate the applicant's records.

A March 11, 2005 letter from [REDACTED] M.D., wherein [REDACTED] noted that the applicant, who resided at [REDACTED] Carpentersville, Illinois, had been his patient since May 1987. A copy of a previously submitted October 25, 1990 letter, also authored by [REDACTED], that confirmed that the applicant had been his patient since May 1987.

An inspection report for property located at [REDACTED] [illegible]. Counsel asserts this report is evidence that the premises of [REDACTED] the applicant's prior employer, was demolished.

An October 30, 1990 letter, authored by [REDACTED] M.D., wherein [REDACTED] stated that the applicant had been her patient since January 1982. Counsel noted that she had contacted [REDACTED] successor practice, as [REDACTED] had retired, for further information on the applicant, but that the office had not responded.

On April 7, 2005, the director denied the application as the record did not provide additional primary or secondary evidence establishing the applicant's illegal and physical presence in the United States from prior to January 1, 1982 through May 31, 1984.

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 beginning prior to January 1, 1982, through May 31, 1984. On appeal, counsel for the petitioner lists two pieces of evidence to substantiate the applicant's residence in the United States beginning prior to January 1, 1982 through May 31, 1984: (1) a notarized affidavit dated November 13, 1990, from the applicant's previous employer, verifying his employment from 1982 through 1985; and (2) a letter from [REDACTED] confirming that the applicant had been her patient since January 1982.

The AAO also takes notice that the record of proceeding contains a receipt for medical care prepared by the office of [REDACTED] listing three dates of provided service: (1) October 3, 1983; (2) January 30, 1984; and (3) November 19, 1990. The AAO finds the receipt sufficient to establish the applicant's presence in the United States beginning in October 1983. The record also includes an affidavit of support signed by the applicant's cousin, [REDACTED] on November 10, 1990, which contains the statement: [REDACTED] was living in my house since 1982 until 11/1984." Even if this affidavit contained sufficient substantive information to establish the applicant's physical presence in the United States, which it does not, the affidavit does not establish that the applicant entered the United States prior to January 1, 1982. The record in this matter does not contain evidence that is probative and credible regarding the applicant's unlawful entry into the United States beginning prior to January 1, 1982 to October 1983.

The notarized affidavit dated November 13, 1990 is submitted on a form employment verification letter. The letter indicates the applicant was employed from December 1981 to September 1985 as a busboy (part-time) at "Old Chops" located at [REDACTED], Palatine, Illinois. The letter lists the applicant's address as [REDACTED]

██████████ Palatine, Illinois. The letter contains a typewritten statement that "the owners of the establishment refuse to provide with [sic] any documents." ██████████ signs the affidavit but the affidavit does not provide any information regarding ██████████ relationship to the applicant. ██████████ does not indicate how he knew the applicant in December 1981 or how he knew the applicant worked at "Old Chops." Further, the affidavit does not include periods of layoff, declare whether the information was taken from company records, identify the location of such company records and state whether such records are accessible as required under 8 C.F.R. § 245a.2(d)(3)(i). The only information in this regard is the typewritten statement that "the owners of the establishment refuse to provide with [sic] any documents."

Pursuant to 8 C.F.R. § 245a.2(d)(3)(i), letters from employers should be on employer letterhead stationery. In addition, the affiant, ██████████, failed to identify his relationship to the applicant or the owners of the establishment; thus it is not possible to conclude that the applicant's claimed former employer prepared the affidavit. Further, the affiant failed to declare that the information was taken from company records, 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 fact, it appears that the affidavit was not written or provided by the actual employer. The applicant's inability to obtain authentic letters of employment seriously detracts from the credibility of his claim of continuous unlawful residence beginning prior to January 1, 1982 and continuing to October 1983.

Although ██████████ indicates in her October 30, 1990 letter that the applicant has been her patient since January 1982, the record does not contain contemporaneous evidence that ██████████ treated the applicant prior to October 1983. Likewise, the affidavit of support prepared in November 1990, is not corroborated by independent credible evidence. The record does not contain any other contemporaneous credible evidence of residence in the United States for the time period beginning prior to January 1982 to October 1983.

Although the applicant has submitted several affidavits in support of his application, the applicant has not provided contemporaneous, credible evidence of his physical presence in the United States prior to October 1983. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. 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 October 1983.

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 to October 1983, 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.