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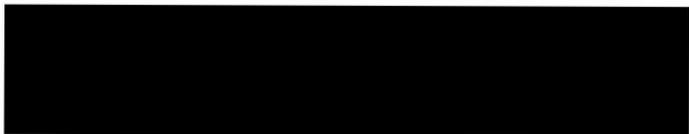
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, D.C. 20529



U.S. Citizenship
and Immigration
Services

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FILE:

MSC 03 053 61124

Office: CHICAGO

Date:

MAR 12 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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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 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 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. Counsel argues that the director failed to make the proper credibility assessments given the context and extent of the documentation, thus amounting to an abuse of discretion. Counsel states that while the affiants did not provide their telephone numbers, the affidavits listed the address for the each affiant, thus belying the director's erroneous assertion that no contact information was provided. Counsel provided additional evidence in support of the appeal.

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:

- A letter dated June 7, 1990, from a representative of [REDACTED], in Chicago, Illinois, who indicated that the applicant has been employed since May 1986, and attested to the applicant's Chicago residence at [REDACTED].
- An affidavit notarized May 18, 1988, from [REDACTED] of Chicago, Illinois, who indicated that she has known the applicant since he was a child and that the applicant resided in her home, [REDACTED], from May 1981 to November 1984, and from May 1986 to September 1990. The affiant asserted that [REDACTED] resided in Texas from December 1984 to April 1986. The affiant asserted that the applicant continues to visit her on a regular basis.
- An additional affidavit notarized November 10, 1990, from [REDACTED] of Chicago, Illinois, who indicated she has known the applicant since 1981 and attested to his Chicago residence at [REDACTED] and to his departure from the United States from December 1986 to January 1987.
- Several earning statements dated from December 13, 20, and 27, 1984, and January 4, 1985, through July 3, 1985, along with a 1985 wage and tax statement from Texas Kenworth Company.
- An enrollment form for the Texas Kenworth Company Group Insurance Form dated February 15, 1985.
- Receipts for registered mail, PS Form 3806, postmarked June 17, 1985, January 23, 1986, April 6, 1987, and May 12, 1987.
- Receipts dated August 27, 1984, April 6 and 13, 1985, and May 4, 1985.
- A letter from [REDACTED] of [REDACTED] Roofing in Chicago, Illinois who indicated that the applicant was employed from May 1981 to October 1981, May 1982 to November 1982 and from May 1983 to November 1983.
- Several pay stubs from [REDACTED] Roofing dated in 1981 (June 19, July 31, September 11 and 25, October 9 and 23), in 1982 (June 25, July 9, August 6, September 3 and 17, October 15, and November 26), and in 1983 (April 15, June 24, July 22, August 5, September 16 and 30, October 28, and November 11 and 25).
- An affidavit notarized May 18, 1988, from [REDACTED] of Chicago, Illinois, who indicated that he has been acquainted with the applicant since May 1981 in the United States, and has remained good friends with the applicant since that time.
- An affidavit notarized May 18, 1988, from [REDACTED] of Chicago, Illinois, who indicated that she has been acquainted with the applicant since 1981 and attested to his character.
- An affidavit notarized May 18, 1988, from [REDACTED] of Chicago, Illinois, who indicated that he has been acquainted with the applicant since 1984, and has remained in contact with the applicant since that time.
- An affidavit notarized May 18, 1988, from [REDACTED] of Chicago, Illinois, who indicated he has known the applicant for approximately six years, and since 1986 he has been a co-worker of the applicant.
- A letter dated May 3, 1990, from [REDACTED], customer engineer of Hewlett-Packard Company, who indicated he has known the applicant for approximately three years.
- Western Union money grams dated May 6, 1985, February 22, 1985, July 29, 1985, September 16, 1985 and November 26, 1985.
- Dental claims dated July 5, 1985, July 26, 1985, and December 5, 1985, from The Prudential Insurance Co. of America.

- A letter dated May 14, 1990, from [REDACTED] of C&S Landscapers and Snowplowers in Deerfield, Illinois, who indicated that the applicant has been employed as a landscape laborer from September 14, 1984, through November 24, 1984, and from October 3, 1987, through November 28, 1987.
- An affidavit notarized November 24, 2003, from a former supervisor, [REDACTED] who indicated that he was a co-worker of the applicant at Roofing Concepts Unlimited in Chicago in 1988.
- An additional affidavit notarized January 16, 2006, from [REDACTED] of Chicago, Illinois, who reaffirmed the contents of his initial affidavit.
- An affidavit notarized November 18, 2003, from [REDACTED] who indicated he was a co-worker of the applicant at Armor Shield Roofing in 1987 and at Roofing Concepts Unlimited in 1988.
- An additional affidavit notarized January 16, 2006, from [REDACTED], of Chicago, Illinois, reaffirmed the contents of his initial affidavit.
- An affidavit notarized January 17, 2006, from an acquaintance, [REDACTED] of Chicago, Illinois, who indicated she has known the applicant since 1981.

The applicant also provided other evidence; however, they have no probative value because:

- The earning statements from [REDACTED] dated subsequent to July 1985 and during 1986, did not list the applicant's name.
- The dates on the money order receipts are indecipherable.
- The year is not listed on the pay stubs from Armor Shield Renovation & Construction, Inc.

In his Notice of Intent to Deny issued on November 4, 2005, the director advised the applicant that he did not provide sufficient primary or secondary evidence to establish his claim. The director noted that the affidavits and other documentation had been taken into consideration; however, it was determined that the applicant had not established by a preponderance of evidence that he met the requirements to adjust his status under the LIFE Act. However, pursuant to *Matter of E--M--*, *supra*, affidavits in certain cases can effectively meet the preponderance of evidence standard.

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 applicant provided affidavits from individuals, all whom provide their current addresses or telephone numbers and indicate a willingness to testify in this matter. The record contains no evidence to suggest that the district director attempted to contact any of the former employers to verify the authenticity of the employment documents submitted. 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.