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U.S. Citizenship
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Services

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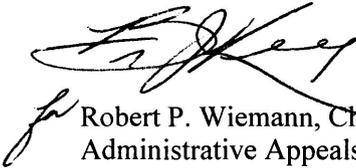
IN RE: Applicant: 

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 (AAO) on appeal. The appeal will be dismissed.

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 a response to the Notice of Intent to Deny was received by the Chicago Office on January 9, 2004. Counsel argues that the director failed to show that the testimonial and documentary evidence provided by the applicant was not completely credible and accurate. 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).

An applicant who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to permanent resident status. Section 245A(b)(1)(C) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1255a(b)(1)(C); 8 C.F.R. §§ 245a.11(d)(1) and 18(a)(1).

“Misdemeanor” means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term actually served, if any; or (2) a crime treated as a misdemeanor under 8 C.F.R. § 245a.1(p). For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 245a.1(o).

At the time the applicant filed his LIFE application, he provided no evidence to establish his continuous unlawful residence in the United States since before January 1, 1982, through May 4, 1988.

On September 11, 2003, the director issued a Form I-72, which requested the applicant to submit evidence establishing continuous residence since before January 1, 1982, through May 4, 1988, and continuous physical presence since November 6, 1986, through May 4, 1988. The applicant was also requested to submit the final court dispositions for all arrests including his arrests in Los Angeles in 1988 for battery and theft. The applicant, in response, submitted:

- An affidavit notarized October 7, 2003, from [REDACTED] of Hickory Hill, Illinois, who indicated he had first met the applicant in 1979 in Pakistan and again in 1983 at a friend’s wedding in the United States. The affiant attested that the applicant’s residence in the United States since 1981 “has been verified by my family members in Pakistan.”
- An affidavit notarized October 7, 2003, from [REDACTED] of Chicago, Illinois, who indicated that he met the applicant at a flea market in 1984. The affiant asserted he can attest to the applicant’s residence in the United States prior to 1984, because “according to [the applicant] he has been living in the states since 1981.”
- Court documentation reflecting that on December 2, 1988, the applicant was convicted of battery, a violation of section 242 PC, a misdemeanor, in Case no. [REDACTED]
- Court documentation reflecting that on July 12, 1988, the applicant was convicted of petty theft with prior jail term, a violation of section 666 PC, a misdemeanor, in Case no. [REDACTED]
- His California identification card and driver license issued on May 27, 1987, and July 22, 1987, respectively.
- His marriage certificate dated May 30, 1987.

In his Notice of Intent to Deny issued on December 23, 2003, the director determined that the applicant had submitted sufficient evidence to establish continuous unlawful residence during 1987 and 1988, but failed to establish continuous unlawful residence since before January 1, 1982, through 1986.

The director, in denying the application, noted that no response has been submitted in regards to the Notice of Intent to Deny. However, the record reflects that counsel submitted a brief dated December 30, 2003, that was received by the Chicago Office on January 8, 2004. Accordingly, counsel’s response will be considered on appeal. Counsel, asserted, in part:

The Service is well aware of the impracticality of getting evidence from over twenty (20) years past. [the applicant] has filed the original application over thirteen (13) years ago. Since then, INS had the opportunity to review and discredit the submitted evidence. [the applicant], without doubt has met the burden of submitting enough evidence to adequately substantiate his case.

All the evidence submitted to support [the applicant's] application, including documents and also his personal testimony, substantiate his claim of residing in this country during the prescribed periods.

The Service failed to show, or even allege, that the testimonial and documentary evidence submitted by the petitioner was not completely credible and accurate.

The Service failed to provide any evidence or argument attaching the credibility of Petitioner's claims or evidence.

That the entirety of the evidence, not simply preponderance of evidence supports the Petitioner's claim of eligibility to adjust status under the ACT.

The statements of counsel regarding the amount and sufficiency of the evidence of residence and the inability to produce additional evidence of residence due to the result of the passage of time have been considered. However, the applicant has not presented *any* evidence to corroborate his claimed employment and residence in California since before January 1, 1982, to April 1987. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Although item 36 of the Form I-687 application requests the applicant to list the full name and address of each employer during the requisite period, the applicant failed to provide complete information. As such, the applicant's alleged employment is not amenable to verification by Citizenship and Immigration Services.

The applicant claimed that he has been in the United States since July 1981, but only provides affidavits from two affiants. The AAO does not view these affidavits as substantive enough to support a finding that the applicant entered and began residing in the United States before January 1, 1982, to April 1987, as the affiants claimed to have met the applicant in 1983 and 1984 and, therefore, they cannot attest to the applicant's alleged residence in the United States prior to 1983 and 1984. Furthermore, neither affiant provided an address for the applicant during the period in question, any details regarding the nature of their relationship with the applicant or the basis for their continuing awareness of the applicant's residence.

The regulation at 8 C.F.R. § 245a.12(e) provides that "[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods." Preponderance of the evidence is defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5th ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991). Given the applicant's reliance on affidavits which do not meet basic standards of probative value coupled with the lack of evidence for the time-period noted above, it is determined that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982, and resided in this country in an unlawful status continuously since that date through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant 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.