



U.S. Citizenship
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FILE:

MSC 02 248 62569

Office: LOS ANGELES

Date:

MAR 21 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, Los Angeles, California, 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 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).

Here, the submitted evidence is not relevant, probative, and credible. In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence:

An affidavit notarized August 28, 1990, from [REDACTED] who indicated the applicant had been a member of her household at [REDACTED], Los Angeles, California from February

1980 to February 1989. The affiant asserted that the applicant did odd jobs in return for room and board.

- Several rent receipts and a notarized affidavit from [REDACTED], who indicated the applicant, was a member of her household at [REDACTED] Los Angeles, California from March 1980 to April 1989. The affiant asserted that the applicant maintained her yard and did odd jobs around the house.
- A letter dated September 19, 1990, from [REDACTED] pastor of San Miguel Church in Los Angeles, California, who indicated the applicant is a member of his parish and attested to the applicant's residence in the area since March 10, 1980.
- Affidavits April 9, 2002, from [REDACTED] of Bell, California, [REDACTED] and [REDACTED] of Lynwood, California, who indicated they have known the applicant since 1981 and have remained friends with the applicant since that time. [REDACTED] indicated the applicant has been in his employ since 1993.
- An affidavit notarized May 20, 2002, from [REDACTED] of Lynwood, California, who attested to the applicant's employment since 1980. The affiant asserted the applicant used to do his yardwork in the 1980's and have remained friends with the applicant since that time.
- An affidavit notarized May 20, 2002, from [REDACTED] of Lynwood, California, who indicated he met the applicant in 1980 at St. Emydius Catholic Church in Lynwood. The affiant asserted the applicant visited his home on numerous occasions, and in 1988, the applicant assisted him with repairs to his home. The affiant attested to the applicant's employment as a gardener.

The director issued a Notice of Intent to Deny dated January 6, 2006, which advised the applicant that at the time of his interview, when questioned several times as to the date he entered the United States and at what age, the applicant replied each time that he entered in 1980 at the age 23 or 24. The director determined that based on his date of birth (October 9, 1965), the applicant would have been either 15 or 16 years at the time he entered the United States in 1980. The director noted that the applicant's 1986 marriage took place in Mexico as well as the birth of his two children in 1986 and 1989. The director determined that there were inconsistencies between his documents and testimony, which impacted the credibility of his claim and, therefore, the applicant had not established continuous residence in the United States during the requisite period.

The notice notes that the applicant was asked to sign a sworn statement, but counsel did not allow it as counsel claimed that the applicant's English was not good and the applicant must have misunderstood the questions." The director noted "the officer tested you in English, you were able to read and write."

Counsel, in response, asserted that the director erred in issuing the Notice of Intent to Deny, as the applicant stated several time to have entered the United States in 1980. Counsel asserted that the question of the applicant's age at the time he entered the United States "cannot lead to the conclusion that [the applicant] was not in the United States during the period from January 1, 1982 to May 4, 1988 because the question fails to ask how old he was when he *first* entered the United States." Counsel asserted that the applicant has submitted signed declarations from individuals who had first-hand knowledge of the applicant's residence during the period in question. Counsel argued that the director should have given the affidavit more weight and there was no indication that an attempt was made to contact the individuals to corroborate the applicant's testimony. Counsel asserted that an effort should have been made to verify the information contained in the affidavits before concluding there were insufficient. Counsel asserts that the applicant did admit that he exited the United States in order to marry his wife in Mexico, and under the LIFE Act, a short absence does

not cut the period of physical presence. Likewise, the director should not conclude that because the applicant's wife gave birth to their children in Mexico, that the applicant was also there and not in the United States. Counsel further stated:

As the attorney who was present during the interview, I must argue that [the interviewing officer] has misrepresented my actions during the interview in the Notice of Intent to Deny. When [the interviewing officer] demanded that [the applicant] sign a document read to him in English I asked [the interviewing officer] that the document should not be simply read to the client but he should be allowed to read it himself because [the applicant] has a right to review and fully understand what he is being asked to sign. [The interviewing officer] told [the applicant] to read the document written in English but he was unable. [The interviewing officer] then proceeded to ask [the applicant] to write a dictated sentence but he was unable to. [The applicant] actually failed this impromptu English test and that is why [the interviewing officer] could not make [the applicant] sign a document that he did not understand. As the attorney representing [the applicant], I had a right to speak to my client when there was an indication that he did not properly understand everything that he was being told or asked. [The applicant's] mannerisms and confusion led me to notice that he did not understand.

Regarding the applicant's *actual* age at the time he claimed to have entered the United States, the fact that the record contains no signed statement, and no evidence that the applicant was proficient in the English language coupled with counsel's statements, the AAO finds no relevance in this matter.

The statements of counsel on appeal regarding the amount and sufficiency of the applicant's evidence of residence have been considered. The AAO, however, agrees with the director's findings that the documents discussed above are not substantive enough to support a finding that the applicant's continuously resided in the United States before January 1, 1982 through January 1986.

██████████ and ██████████ both attest to the applicant residing at their home at the same time during the requisite period. This contradiction raises questions to the authenticity of each affidavit. As conflicting statements have been provided, it is reasonable to expect an explanation from the affiants in order to resolve the contradictions. However, no statement from either affiant has been submitted to resolve the contradicting affidavits. As such, it is determined that these affidavits are not plausible, credible, and consistent both internally and with the other evidence of record

██████████ and ██████████ claimed to have known the applicant since 1980, but neither affiant provided the address where the applicant resided throughout the period in which the affiants claim to have known the applicant. The remaining affiants all claimed to have known the applicant at some point during the requisite period, but provide no address for the applicant, and no detail regarding the nature or origin of their relationships with the applicant or the basis for their continuing awareness of the applicant's residence.

The letter from ██████████ 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.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent

objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

The evaluation of the applicant's claim is a factor on both the quality and quantity of the evidence provided. While affidavits in certain cases can effectively meet the preponderance of evidence standard, two of the affidavits submitted by the applicant are contradictory and the remaining affidavits do not meet the probative and evidentiary standards. Given the credibility issues arising from the documentation provided by the applicant, 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 from before January 1, 1982 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.

Finally, the record reflects that on December 6, 1999, the applicant was convicted of carrying a concealed weapon within a vehicle and carrying a loaded firearm in Case no. [REDACTED]. While these convictions do not render the applicant ineligible pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a), the AAO notes that the applicant does have two misdemeanor convictions.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.