

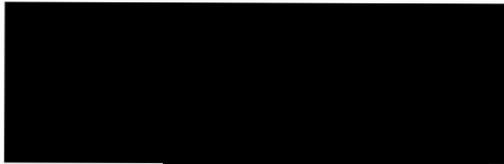
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U.S. Department of Homeland Security
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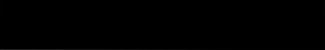
U.S. Citizenship
and Immigration
Services

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FILE:



Office: BALTIMORE

Date:

MAY 12 2008

MSC 02 147 61383

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, Baltimore, Maryland, and rejected by Administrative Appeals Office (AAO) on appeal as untimely filed. The AAO reopens the matter, sua sponte, and affirms the director's decision to deny the application.

The district director denied the application because the applicant failed to demonstrate 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 submitted sufficient evidence in the form of affidavits to substantiate his claim of continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

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 or 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 the Notice of Intent to Deny (NOID), dated on October 14, 2005, the director stated that the applicant failed to submit substantial evidence demonstrating his entry into the United States before January 1, 1982, and his continuous unlawful residence in the United States during the requisite period. The director granted the applicant thirty (30) days to submit additional evidence. In rebuttal to the NOID, counsel submitted additional evidence. In the Notice of Decision, dated on June 7, 2006, the director stated that the submitted evidence established the applicant's presence beginning in 1985. The director denied the instant applicant 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 entered the United States before January 1, 1982, and continuously resided in an unlawful status in the United States during the requisite period. Here, the applicant has failed to meet this burden.

In support of his claim, the applicant submitted the following relevant evidence:

1. A July 3, 2006, notarized declaration by [REDACTED], who stated that he has known the applicant as a friend and business acquaintance since the summer of 1981. The declarant described how he met the applicant in the export trading business when the declarant was working for a transportation and logistics company. The declarant provided his place of residence and telephone number. This declaration reaffirms the declarant's previous declaration, dated on May 29, 1990. Although not required, the declaration failed to include any supporting documentation of the declarant's presence in the United States during the requisite period. The declarant failed to indicate the applicant's place of residence during the statutory period. The lack of details in the declaration to corroborate the applicant's claim of continuous residence for the entire requisite period detracts from the credibility of his claim.
2. A November 10, 1989, affidavit by [REDACTED], who stated that he has personally known the applicant since 1980 until the present. The affiant provided his telephone numbers and business address. Although not required, the affiant failed to include any supporting documentation of his presence in the United States during the requisite period. The affiant failed to indicate how he dated his acquaintance with the applicant, how he met the applicant or how frequently he saw the applicant. The affiant also failed to indicate the applicant's place of residence during the statutory period. The affidavit provides little probative value.

3. A November 10, 1989, affidavit by [REDACTED], who certified that he has personally known the applicant since 1980 to the present. The affiant stated that he provided the applicant's food and accommodation in exchange for services as a helper and caretaker from 1980 to 1985. The affiant provided his telephone number and current place of residence. The affiant did not indicate his or the applicant's place of residence during the statutory period. Although not required, the affidavit failed to include any supporting documentation of the affiant's presence in the United States during the requisite period. The affidavit also failed to include any supporting documentation to corroborate the affiant's claim, such as salary receipts, household bills, etc. The affidavit provides little probative value.
4. An undated declaration by [REDACTED] who stated that he has known the applicant since 1979. The declarant stated that he first met the applicant at the New York airport while waiting to receive their respective friends. The declarant stated that in 1982 he moved to Houston and, after many years, convinced the applicant to move to Houston in 1986. The declarant provided his place of residence. However, the declarant failed to indicate the applicant's place of residence during the statutory period. Although not required, the declaration failed to include any supporting documentation of his presence in the United States during the requisite period. The declaration provides little probative value.
5. Photocopies of three New York Telephone bills in the applicant's name, address [REDACTED] Rego Park, NY 11374, dated on October 16, 1985, November 16, 1985, and December 16, 1985. This evidence tends to establish the applicant's presence in the United States in October through December 1985.
6. A November 10, 2004, affidavit by [REDACTED], librarian at The New York Public Library, who stated that the attached reproductions of the NYNEX White Pages: Queens, 1986-1987 were true copies made from microfiche in the library collection. The NYNEX White Pages contained an entry for the applicant at [REDACTED]. This evidence tends to establish the applicant's presence in the United States at some point during 1986-1987.
7. A November 10, 2004, affidavit by [REDACTED], librarian at The New York Public Library, who stated that the attached reproductions of the NYNEX White Pages: Queens, 1987-1988 were true copies made from microfiche in the library collection. The NYNEX White Pages contained an entry for the applicant at [REDACTED]. This evidence tends to establish the applicant's presence in the United States at some point during 1987-1988.
8. A November 9, 2005, declaration by [REDACTED], of the AXA Equitable Life Insurance Company, who stated that the applicant had a policy established on August

18, 1986, and terminated on June 7, 2003. This evidence tends to demonstrate the applicant's presence in the United States in 1986.

9. An October 11, 2005, declaration by [REDACTED] service office at Citibank, who stated that the applicant maintained a Passbook savings # [REDACTED] and was the only owner of the account. The record also contains a photocopy of the applicant's Citibank Savings Passbook with entry dates from February 6, 1986, through April 14, 1988, and July 13, 1988, through July 19, 1988. This evidence tends to demonstrate that the applicant was present in the United States in 1986 through April 14, 1988, and in July 1988.
10. The applicant's Social Security Statement, dated September 2, 2003, which indicated that the applicant worked in the years 1987 through 1994 and 1999 through 2002. This evidence tends to demonstrate that the applicant was present in the United States in 1987 and 1988.

The applicant has submitted various types of evidence in support of his application. Although the applicant has submitted several affidavits/declarations in support of his continuous residence in the United States from before January 1, 1982, through May 4, 1988, the applicant has not provided sufficient evidence of residence in the United States before January 1, 1982, through 1984. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. None of the affidavits/declarations indicated the applicant's place of residence during the statutory period. Although not required, none of the affidavits/declarations included any supporting documentation of the affiant's/declarant's presence in the United States during the requisite period. 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.

The applicant has submitted sufficient evidence to demonstrate his residence in the United States from 1985 through 1987. The applicant's telephone bills, entry in the NYNEX White Pages, life insurance policy, Passbook savings account, and social security statement tend to establish his residence in the United States beginning in 1985.

However, the applicant has failed to establish his continuous unlawful residence in 1988. The applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status pursuant to Section 245A of the Immigration and Nationality Act on November 24, 1989. In his Form I-687, Question #35, where asked to list all absences from the United States since entry, the applicant stated that he went to India to visit his sick mother from April 1988 to May 1988. There is nothing in the record, beside the applicant's own testimony, to indicate that he returned to the United States in May 1988. In the NOID, the director noted that the applicant's Citibank Savings Passbook did not contain any transactions between April 14, 1988, and July 13, 1988. The absence of any transactions during this period raises questions regarding the length of the applicant's absence from the United

States. The applicant failed to reconcile this discrepancy in response to the NOID. The applicant has failed to demonstrate the length of his absence from the United States in 1988 and, therefore, his continuous unlawful residence during the entire requisite period.

Pursuant to 8 C.F.R. § 245a.12(e), 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 little probative value, it is concluded that he has failed to establish entry into the United States prior to January 1, 1982. While the evidence tends to demonstrate the applicant's residence in the United States beginning in 1985, the applicant has failed to establish continuous unlawful residence in the United States during the entire requisite period.

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.