

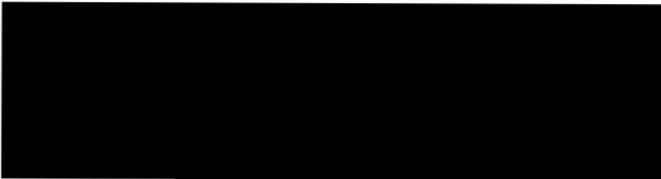
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U.S. Citizenship
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FILE: [REDACTED]
MSC 01 345 61310

Office: LOS ANGELES

Date: MAY 20 2008

IN RE: Applicant: [REDACTED]

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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 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, the applicant asserts that he never received the Notice of Intent to Deny.

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. Section 1104(c)(2)(B)(i) of the LIFE Act; 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:

- Wage and tax statements from 1986 from Specified Plating Co., and Power Packaging, Inc. in Chicago, Illinois.
- Wage and tax statements from 1987 and 1988 from Specified Plating Co., in Chicago, Illinois.
- Form 1099-G from the state of Illinois for the calendar year of 1987.

- A notarized affidavit from a cousin, [REDACTED] of Chicago, Illinois, who indicated that the applicant resided with him in Chicago at [REDACTED] from January 1983 through 1987.
- A notarized affidavit from [REDACTED] of Chicago, Illinois, who attested to the applicant's residence in the United States since 1983. The affiant asserted that in 1983 he visited the applicant at his place of residence in Chicago, and has remained in touch with the applicant since that time.
- A notarized affidavit from [REDACTED] of Chicago, Illinois, who attested to the applicant's residence in the United States since 1983. The affiant asserted that he was a neighbor of the applicant.
- A notarized affidavit from [REDACTED] of Chicago, Illinois, who attested to the applicant's residence in the United States since 1983. The affiant asserted that he visited the applicant in 1983 as his place of residence has seen the applicant quite often since that time.
- A notarized affidavit from [REDACTED] of Chicago, Illinois, who indicated that the applicant was employed at Universal Store at [REDACTED], Chicago, Illinois as a stock and maintenance man from May 1, 1983 to December 24, 1985, and was paid \$120.00 in cash each week. The affiant asserted that the company is no longer in business, and provided his address and telephone number if there was a need for verification of the applicant's employment. .
- A notarized affidavit from a brother-in-law, [REDACTED] of El Monte, California, who attested to the applicant's El Monte residence at [REDACTED] from January 1981 to December 1982.

On September 9, 2004, the director issued a Notice of Intent to Deny, which advised the applicant that except for affidavits, he had furnished no documents to support his claim of residence in the United States for 1981 to 1985. The director noted that the affidavits did not contain enough objective evidence to which they could be compared to determine whether the attestations were credible, plausible or internally consistent with the record.

The director, in denying the application, noted that the applicant had failed to respond to the notice dated September 9, 2004. On appeal, the applicant asserts that he never received the notice.

Pursuant to *Matter of E--M--*, *supra*, affidavits in certain cases can effectively meet the preponderance of evidence standard, and the director cannot simply refuse to consider such evidence merely because it is unaccompanied by other forms of documents.

On March 24, 2008, a courtesy copy of the Notice of Intent to Deny was sent to the applicant at his address of record. Counsel, in response, submitted copies of documents that were previously provided with his application along with the following:

- A notarized affidavit from [REDACTED] of Chicago, Illinois, who attested to the applicant's residence in Chicago from January 1983 to July 1994. The affiant asserted that he regularly visited the applicant and attended social events together.
- Notarized affidavits from [REDACTED] of Ontario, California, who attested to the applicant's El Monte, California and Chicago, Illinois residences in the United States since 1981. The affiant asserted that in mid-1981, she visited the home of the applicant's brother in El Monte, California, and she was a neighbor of the applicant from January 1981 to January 1983.
- A letter dated January 7, 2003, from a representative of Specified Plating Company, who attested to the applicant's employment from January 1986 to January 1993.

In this instance, the applicant submitted evidence, 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 and/or telephone numbers and indicate a willingness to testify in this matter. The record contains no evidence to suggest that the director attempted to contact the applicant's former employer to verify the authenticity of the employment document 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 dismissed. This decision constitutes a final notice of ineligibility.