

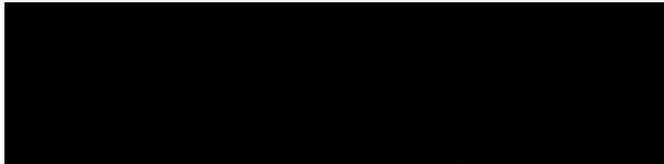
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U.S. Citizenship
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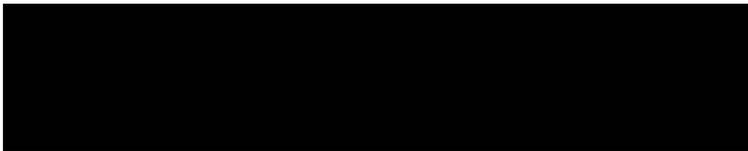
IN RE: Applicant:



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. 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, New York, New York, 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 failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

On appeal, counsel for the applicant submits a brief.

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 states 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 petitioner 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 petitioner 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 or petition.

The regulations at 8 C.F.R. § 245a.2(d)(3) provide an illustrative list of contemporaneous documents that an applicant may submit. While affidavits “may” be accepted (as “other relevant documentation”) [See 8 C.F.R. § 245a.2(d)(3)(vi)(L)] in support of the applicant’s claim, the regulations do not suggest that such evidence alone is necessarily sufficient to establish the applicant’s unlawful continuous residence during the requisite time period.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant’s employment must: provide the applicant’s address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant’s duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v), states that attestations from churches, should: identify the applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where the applicant resided during the membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

On June 3, 2002, the applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

In a Notice of Intent to Deny (NOID), dated December 13, 2005, the district director advised the applicant that he had failed to establish continuous unlawful residence in the United States from prior to January 1, 1982, through May 4, 1988. The district director granted the applicant 30 days to submit any additional evidence he wished to be considered in making a decision in his case.

The district director denied the application in a Notice of Decision (NOD), dated July 8, 2006, based on the reasons stated in the NOID. The applicant filed a timely appeal from that decision on August 8, 2006.

On appeal, counsel asserts that the officer assigned to the case used the wrong legal standard to reach his decision. Counsel further concludes that the evidence, both primary and secondary, is and was available in the matter and should be considered.

The issue in this proceeding is whether the applicant has furnished sufficient evidence to establish that he continuously resided in the United States in an unlawful status before January 1, 1982, through May 4, 1988. With regard to that time period, the applicant has provided the following documentation:

1. An affidavit, notarized on November 20, 1989, from [REDACTED], [REDACTED], of Hartsdale, New York, stating that the applicant had been his friend since

August 1981; a notarized letter, dated April 23, 1990, from [REDACTED] of Roofing Systems Co., stating that the applicant had been employed as a roofer since September 1981 at a pay rate of \$250 per week; a notarized letter, dated April 26, 1990, from [REDACTED] stating that the applicant had lived at his property in Hartsdale, New York, from September 1, 1981; a letter, notarized on May 3, 1990, from [REDACTED] stating that the applicant left his job from May 3 to June 3, 1987, because of sickness in the family; an undated letter from [REDACTED], notarized on July 5, 2004, stating that the applicant lived with him from September 1981 until April 1990; and, an undated letter from [REDACTED] of [REDACTED] Professional Restoration Contractor, Port Chester, New York, stating that he met the applicant at a gathering in August 1981 and they have been friends since then. In this letter, [REDACTED] states that the applicant worked for him as a roofer's assistant from September to November 1981. With regard to [REDACTED]'s statements regarding the applicant's employment, they do not identify the location of company records and state whether such records are accessible, or, in the alternative, state the reason why such records are unavailable.

2. A letter, dated April 27, 1990, from the rector of Holy Trinity Church, Hispanic Pastoral Center, Portchester, New York, stating that the applicant had been a member of the church for the last ten years. While the letter is on organizational stationery letterhead, identifies the applicant by name, and is signed by an official of the church, it does specify the inclusive dates of membership, the address where the applicant resided during the membership period, include the seal of the organization, establish how the author knows the applicant or the origin of the information being attested to.
3. A letter, notarized on May 3, 1990, from [REDACTED], of White Plains, New York, stating that the applicant is a close friend and that he knows that the applicant was absent from the United States from May 3, 1987 to June 1, 1987, because he drove him to the airport. The applicant also submitted a death certificate for [REDACTED] dated October 19, 2003, and photographs of the applicant at the funeral.
4. A letter, dated May 31, 2005, from [REDACTED], M.D., stating that the applicant has been in the United States for several years and has been working for him (and has done work for his brother and mother) as a skilled carpenter.
5. An airline ticket issued to the applicant in May 1987 for travel from New York, New York, to Lima, Peru. The district director noted that the ticket failed to show the applicant actually took this flight because the upper right corner of the ticket was never endorsed by the airlines. In a letter dated May 28, 1991, LanChile Airlines was unable to verify the applicant's departure on May 28, 1987, stating that they did not maintain files dated back to 1987.

Although the applicant has submitted affidavits and letters in support of his application, he has not provided sufficient contemporaneous evidence of residence in the United States during the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. While not required, none of the affidavits or letters provided by the applicant are accompanied by proof of the affiants' identification or any evidence that they resided in California during the relevant period. The letters from [REDACTED] and [REDACTED] do not attest to the applicant's presence in the United States prior to January 1, 1982. As such, they can be afforded minimal weight as evidence of the applicant's residence and presence in the United States throughout the requisite period. The absence of sufficient documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim.

It is concluded that the applicant has failed to establish that he resided in continuous unlawful status in the United States from before January 1, 1982, 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.