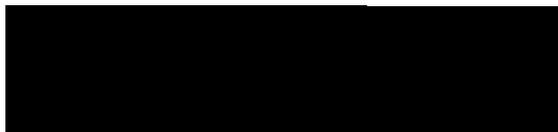


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FILE:

MSC 02 254 64957

Office: LOS ANGELES

Date: MAY 30 2008

IN RE: Applicant:

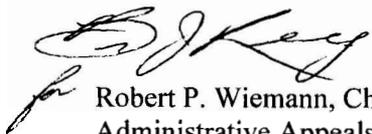


APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT: SELF-REPRESENTED

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.


for 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 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, the applicant reasserts his eligibility. The applicant states that he has proof that he has been living in the United States since 1981, and does not submit additional evidence on appeal.

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 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).

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.

In the Notice of Intent to Deny (NOID), the director stated that the applicant failed to submit sufficient evidence demonstrating his continuous unlawful residence in the United States during the requisite period. The director noted that at an interview on February 8, 2006, the applicant stated in a sworn statement that he departed the United States from January or February 1986 to January 1987. The director granted the applicant thirty (30) days to submit additional evidence.

The record reflects that the applicant's response to the NOID consisted of an affidavit from [REDACTED] stating that she has known the applicant since January 1980; an affidavit from [REDACTED] stating that she has known the applicant since 1984; two affidavits from [REDACTED], one stating that he knew that the applicant left the United States on January 10, 1987, and returned on June 30, 1987, and the other stating that he has known the applicant since January 1980; and, an affidavit from [REDACTED], stating that he has known the applicant since 1984. In the Notice of Decision, dated July 6, 2006, the director denied the instant application based on the reasons stated in the NOID.

On appeal, the applicant states that he has been living in the United States since 1981, "except for the exit I had." The applicant does not submit any additional evidence on appeal.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period. Here, the submitted evidence is not relevant, probative, and credible.

Affidavits and Letters

The applicant submitted an affidavit from [REDACTED], stating that she has known the applicant since January 1980. Ms. [REDACTED] also states that the applicant has been her neighbor for many years. However, the affiant does not state whether the applicant has been a continuous resident of the United States since that time.

In addition, the applicant submitted a sworn affidavit from [REDACTED], who attests to knowing him in the United States since 1984. Ms. [REDACTED] does not attest to knowing the applicant in the United States since prior to January 1, 1982, and the affiant does not state whether the applicant has been a continuous resident of the United States since that time.

The applicant also submitted a sworn affidavit from [REDACTED] who attests to knowing him in the United States since 1984. Ms. [REDACTED] does not attest to knowing the applicant in the United States since prior to January 1, 1982, and states that the applicant has been his neighbor since 1984. However, the affiant does not state how he dates his acquaintance with the applicant, and whether the applicant has been a continuous resident of the United States since prior to January 1, 1982.

In addition, the applicant submitted two affidavits from [REDACTED]. In one of the affidavits, [REDACTED] states that he knew that the applicant left the United States because on January 10, 1987 he took the applicant to Tijuana, Mexico, and the applicant returned on June 30, 1987, through the fields in San Ysidro, California, with the help of a Coyote. The affiant does not provide any additional details, nor does the record contain any corroborative evidence to support the affiant's statement. In his second affidavit, [REDACTED] states that he has known the applicant in the United States since January 1980, and that he always kept in touch with the applicant. However, [REDACTED] does not state how he dates his acquaintance with the applicant, how he kept in touch with the applicant, and whether the applicant has been a continuous resident of the United States since prior to January 1, 1982.

The record reflects that the applicant stated at his interview that he departed the United States in January or February 1986, and returned in January 1987. Specifically, the record reflects that when the applicant was asked when he left the United States, he stated that it was in January or February 1986, and when he was asked when he returned, he stated it was in January 1987. The applicant disputes having made these statements, and states that he recalls stating that he left the United States on June 10, 1987, and returned on June 30, 1987. However, as noted above, the record reflects that the applicant testified that he departed the United States in January or February 1986, and returned in January 1987. The applicant has failed to submit any reliable corroborating evidence to support his claim. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

It is noted that the applicant submitted various documents, including wage and tax records. These documents, however, do not pertain to the requisite period, and therefore, are not relevant and lack probative value.

Although the applicant has submitted letters and affidavits in support of his application, the applicant has not provided any 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. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period. None of the affiants provided any reasonable detail of how they dated their acquaintance with the applicant, how they met the applicant or how frequently they saw the applicant. 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. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend

on the extent of the documentation, its credibility and amenability to verification. In addition, although the applicant claims that he has resided in the United States since July 1981, the applicant has not provided any contemporaneous evidence in support of his claim. It is reasonable to expect that the applicant would be able to provide some reliable contemporaneous documentation if he has been in the United States since 1980 as stated on his application or in 1981 as he claims on appeal. Given the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

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