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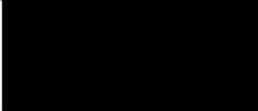
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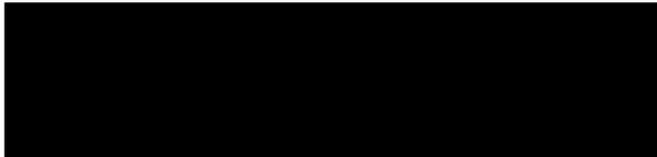
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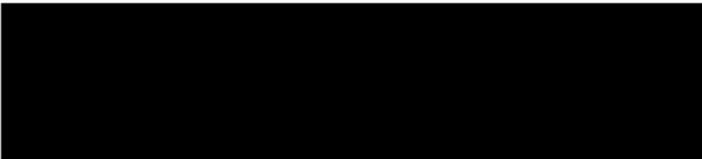
IN RE: Applicant:



APPLICATION:

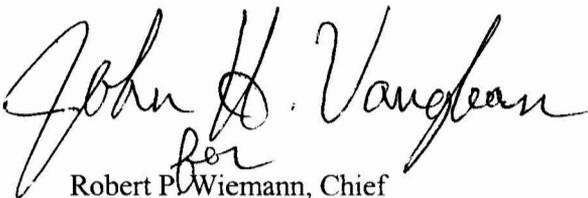
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

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.


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 director in New York City. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that he resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal the applicant asserts that the evidence submitted is sufficient to establish that he has resided in the United States continuously in an unlawful status since 1981.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. See section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

Continuous unlawful residence” is defined at 8 C.F.R. § 245a.15(c)(1) as follows: “An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.”

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 its amenability to verification. See 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 applicant, a native of Thailand who claims to have lived in the United States since September 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on September 19, 2001. As evidence of his residence in the United States during the period 1981-1988, the applicant submitted the following documentation, some of which dated back to 1990:

- Two letters of employment from [REDACTED] of Delhi Palace restaurant in Palm Springs, California, dated April 30, 1990 and April 1, 2002, stating that the applicant patronized his restaurant in La Puente, California, in 1986 and 1987, and was employed as a waiter in Palm Springs from February 1988 to 1990.
- Two affidavits from [REDACTED], a resident of Van Nuys, California, dated April 28, 1990, stating that she had personal knowledge that the applicant resided at three different addresses in Southern California from November 3, 1981 to the present (April 1990), and that the applicant was employed as a waiter at Mayura Restaurant in Van Nuys, California, from November 1981 to June 1982.
- Three letters from [REDACTED], of the Wat Thai Buddhist Temple in Los Angeles, California, dated March 23, 2002. In the first letter [REDACTED] attested that the applicant resided at [REDACTED], Van Nuys, California, from November 1981 to October 1982, that while residing at this location the applicant attended the Wat Thai Buddhist temple and Buddhist school, that the applicant relocated to [REDACTED], North Hollywood, California, where he received schooling about Buddhist meditation practice from November 1982 to October 1987, that the applicant relocated to [REDACTED] Palm Springs, California, from January 1988 through May 1990, and that the applicant remained active in both school and the temple located in North Hollywood, California. In the second letter [REDACTED] attested that the applicant has been known to him since November 1981, that from November 1981 to October 1982 he resided at the [REDACTED] Van Nuys, apartment, and that he regularly attended the temple for religious services from November 1981 to May 1990. In the third letter Mr. [REDACTED] attested that the applicant was absent from the temple to attend his father's funeral service, traveling through Thailand to India, from November 15, 1987 to December 9, 1987.

- Affidavits from [REDACTED] and [REDACTED], residents of Palm Desert and Palm Springs, California, dated April 30, 1990, stating that they had personal knowledge that the applicant resided at three different addresses in Southern California from November 3, 1981 to the present (April 1990).

An affidavit from [REDACTED] a resident of Port Jefferson, New York, dated September 7, 2001, stating that he had personal knowledge that the applicant resided in the United States from November 1981 to the present (September 2001), that he first met the applicant at the Thai Buddhist Temple in California, and that the longest time he had not seen the applicant was from November to December 1987.

- A copy of a California Identification Card in the applicant's name issued on April 20, 1982, and a copy of a Bank of America account booklet with entries from December 1981 up to May 1982

In a Notice of Intent to Deny (NOID), dated August 8, 2006, the director, citing inconsistencies between the testimony of the applicant at his LIFE legalization interview on May 31, 2005 and other records in the file, notified the applicant that the discrepancies in the record called into question the veracity of his claim of continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988. The director specifically noted that the applicant's testimony at his LIFE legalization interview, in which he stated that he traveled to Thailand only once, from November 1987 to December 9, 1987, to visit his family is contrary to Service records showing that the applicant was placed in deportation proceedings on June 2, 1982 and deported from the United States on June 8, 1982. The director also noted that the applicant's claim that he was issued a B-2 visa from the United States Consulate in Bangkok, Thailand, on November 20, 1987, was not reflected on the copy of his passport which he claimed he used to travel to the United States in 1987. The director concluded that the failure of the applicant to reveal his arrest and deportation at his LIFE legalization interview and on his Form I-687 and Form I-485, amounted to misrepresentation of a material fact which renders him inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA). The director further indicated that the affidavits submitted by the applicant as evidence of his residence in the United States were insufficient to overcome the discrepancies noted above. The applicant was granted 30 days to submit additional evidence.

In response to the NOID, the applicant submitted a personal affidavit in which he offered some explanations for the inconsistencies cited in the NOID. The applicant submitted copies of some documentation that was previously submitted into evidence.

On October 3, 2006, the director issued a Notice of Decision denying the application. The director stated that the applicant's response to the NOID was insufficient to overcome the grounds for denial, and failed to resolve the discrepancies discussed in the NOID.

On appeal, counsel asserts that the evidence submitted by the applicant is sufficient to warrant approval of his application. Counsel did not submit any additional documentation with the appeal.

The file includes a copy of Form I-94, indicating that the applicant was admitted into the United States until September 30, 1981 as a C-1 (alien in transit to a vessel). Also in the file is a Record of Deportable Alien (Form I-213), dated June 2, 1982, confirming that the applicant was admitted into the United States on a C-1 visa on September 28, 1981, in transit to join the M/V Epimelia Vessel in Houston Texas. The applicant failed to join the ship and instead moved to California to reside illegally. About June 1, 1982, the Immigration and Naturalization (INS) received information of the applicant's location in the United States, contacted the applicant at the address provided, and requested that he appear at the INS office in Los Angeles to verify his status. A record check by the INS officer indicated that the applicant had no legal authorization to remain in the United States.

On June 2, 1982, the applicant was issued an Order to Show Cause, Notice of Hearing, and Warrant for Arrest of Alien (OSC), and charged with deportability under Section 241(a)(2) and Section 101(a)(15) of the Act with a hearing scheduled for June 9, 1982. The applicant was detained. The applicant then requested a voluntary departure from the United States. On June 4, 1982, the applicant was granted the request and ordered to leave the United States on or before June 7, 1982. On June 8, 1982 (after his failure to abide by the voluntary departure date), the applicant was ordered deported by the District Director in Los Angeles, California. On the same date, the applicant was deported from Los Angeles Airport on Pan Am flight [REDACTED]. Said deportation is verified by INS records.

The AAO finds that the applicant was correct in his claim that he entered the United States in September 1981. However, it is undisputable that the applicant was deported from the United States on June 8, 1982. Deportation during the requisite period for continuous residence in the United States (before January 1, 1982 through May 4, 1988) makes the applicant ineligible for LIFE legalization under 8 C.F.R. § 245a.15(c)(3).

The appeal will be dismissed, and the application denied.

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