



U.S. Citizenship
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[REDACTED]

FILE: [REDACTED] Office: NEW YORK
[REDACTED] - consolidated herein]
MSC 03 219 60412

Date: **SEP 02 2008**

IN RE: Applicant: [REDACTED]

PETITION: 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:

[REDACTED]

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 determined that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982, through May 4, 1988, and that he maintained continuous physical presence in the United States during the period from November 6, 1986, through May 4, 1988, as required under section 1104(c)(2)(B) and (C) of the LIFE Act.

On appeal, the applicant submits a brief statement and additional documentation.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish his continuous unlawful residence in the United States from before January 1, 1982, through May 4, 1988, and his continuous physical presence in the United States from November 6, 1986, through May 4, 1998.

“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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). *See* 8 C.F.R. 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.13(f). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

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 applicant filed the current Form I-485, Application to Register Permanent Resident Status or Adjust Status, under the LIFE Act on May 7, 2003. In an interview required in connection with his application, the applicant stated that he had initially entered the United States in December 1981, and had departed the United States for 62 days - from October 24, 1987, to December 25, 1987.

On September 26, 2006, the district director denied the application. The applicant filed a timely appeal from that decision on October 23, 2006. On appeal, the applicant states that he disagrees with the district director's decision and submits the documentation noted in No. 9, below.

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 from before January 1, 1982 through May 4, 1988, and his continuous physical presence in the United States during the period from November 6, 1986, through May 4, 1988.

A review of the record reveals that, in an attempt to establish continuous unlawful status from before January 1, 1982, through May 4, 1988, and continuous physical presence in the United States during the period from November 6, 1986, through May 4, 1988, the applicant has submitted the following documentation throughout the application process:

1. A fill-in-the-blank declaration, notarized on October 11, 1988, from [REDACTED] of Pompano, Florida, stating that he employed the applicant in agricultural work between May 1, 1985, and May 1, 1986.

2. An undated letter, notarized on October 12, 1988, from [REDACTED] of Pompano Beach, Florida, stating that the applicant stayed with her “during his time of employment on Cook Farms.”
3. An undated letter, with no date of notarization, from [REDACTED] of Astoria, New York, stating that the applicant shared a house with him from November 1981 to December 1995.
4. A letter, dated September 8, 1986, from [REDACTED] identified as the Vice-President of Fay Chaw Merchants’ Association, Inc., New York, New York, stating that he had known the applicant since 1981.
5. Two similar undated letters. One, notarized on May 2, 1991, from [REDACTED] of Brooklyn, New York, stating that the applicant is his “cordial friend and well-wisher,” and that he went with the applicant to a Citizenship and Immigration Service (CIS) office on February 20, 1988. Another, notarized on December 21, 1992, from an unidentified affiant (the signature is not legible), stating that the applicant is “an intimate friend,” and that the affiant went with the applicant to a CIS office on February 20, 1988.
6. An undated letter, with no date of notarization, from [REDACTED] of Brooklyn, New York, stating that he has been well acquainted with the applicant since 1981.
7. Three similar undated, un-notarized, fill-in-the-blank declarations from [REDACTED] of Astoria, New York, stating, in part, that he knew the applicant in Bangladesh, they met at [REDACTED]’s house in December 1981, and that the applicant told him that he had entered the United States without inspection via the U.S./Canadian border; [REDACTED] of Astoria, New York, stating, in part, that he met the applicant at a night club in November 1981, and that they would get together from time to time since that date; and [REDACTED], stating that she met the applicant at a friend’s house in December 1981, and has seen him every two weeks since that date.
8. Similar affidavits, notarized in October 2006, from [REDACTED] of Astoria, New York, stating that he has been a friend of the applicant’s since late December 1981, they met at prayers in Corona, New York, and they have prayed at the mosque several times thereafter; [REDACTED] of Astoria, New York, stating that he is unable to date the beginning of his acquaintance with the applicant, but that they had been friends since late February 1983; and, [REDACTED] of Brooklyn, New York, stating that he is unable to date the beginning of his acquaintance with the applicant, but that they had been friends since late January 1982. Each of the affiants attest to their knowledge that the applicant resided in Astoria, New York, since January 1988.

The employment letter provided (No. 1, above) does not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i) in that it fails to identify the applicant's address at the time of his employment; exact period of employment; periods of layoff (if any); the applicant's specific duties; or 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 affiants provide little information for concluding that they had direct and personal knowledge of the events and circumstances of the applicant's residence in the United States. As such, they can only be afforded minimal weight as evidence of the applicant's residence and presence in the United States throughout the requisite period.

In summary, the applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no credible school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), and no hospital or medical records that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv). The applicant also has not provided documentation (including, for example, money order receipts, passport entries, children's birth certificates, dated bank book transactions, letters of correspondence, a Social Security card, automobile contract, insurance documentation, tax receipts, insurance policies, or letters according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (K). The documentation provided by the applicant consists solely of third-party affidavits ("other relevant documentation") that lack detail and are of minimal evidentiary weight.

While not directly dealt with in the district director's decision, there must be a determination as to whether the applicant's absence from the U.S. for more than 45 days was due to "emergent reasons." Although this term is not defined in the regulations, *Matter of C-*, 19 I. & N. Dec. 808 (Comm. 1988) holds that *emergent* means "coming unexpectedly into being."

At no point has the applicant put forth any reason or any valid basis for his extended departure from October 24, 1987, to December 25, 1987, during the requisite time period, or any evidence of his intent to return to the United States within 45 days of his departure. Accordingly, in the absence of evidence that the applicant intended to return within 45 days, it cannot be concluded that emergent reasons "which came suddenly into being" delayed or prevented the applicant's return to the United States beyond his 45-day period of absence.

The regulation at 8 C.F.R. § 245a.12(e) provides that "[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods." Preponderance of the evidence is defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5th ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

The AAO finds that the applicant has failed to establish, by a preponderance of the evidence, that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, and that he maintained continuous physical presence in the United States during the period from November 6, 1986 through May 4, 1988, as required by 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.