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Date: SEP 22 2008

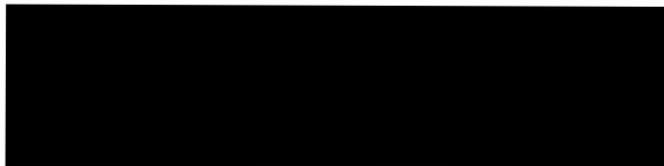
IN RE: Applicant:



APPLICATION:

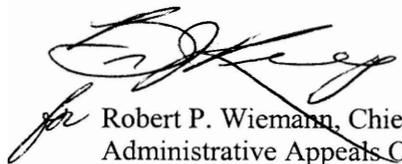
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



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 director in Los Angeles, California. 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 entered the United States before January 1, 1982 and resided in the country in continuous unlawful status through May 4, 1988.

On appeal counsel asserts that the affidavit evidence previously submitted by the applicant is sufficient to establish his continuous residence in the United States during the period required for LIFE legalization.

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).

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 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, who was born in Mexico on May 1, 1969 and claims to have resided in the United States since 1980 or 1981, filed his application for permanent resident status under the LIFE Act (Form I-485) on June 4, 2002. At that time the only evidence of the applicant's residence and physical presence in the United States during the 1980s was a series of statements from acquaintances of the applicant which had been submitted at the Legalization Office in Los Angeles, along with a Form I-687 (application for temporary resident status) and a Form for Determination of Class Membership in *CSS v. Meese* (a legalization class action lawsuit), in September 1993. They included the following:

- An undated statement by [REDACTED] a resident of Lancaster, California, that the applicant lived with her from the time he arrived in the United States in November 1981 until February 1985, when he moved to North Hollywood. Ms. [REDACTED] stated that she supported the applicant, giving him room and board, while he performed maintenance jobs in her house, such as cleaning and painting.
- An undated statement by [REDACTED], a resident of North Hollywood, California, that he met the applicant in February 1985 and that the applicant worked for him as a maintenance man in a building at [REDACTED] Sepulveda, California, from March 1985 to October 1988.

A second undated statement by [REDACTED] confirming that he met the applicant in February 1985 and indicating that he drove the applicant to Tijuana, Mexico, in July 1987.

- A third statement by [REDACTED] this one dated June 10, 1993, that he had known the applicant "during the period of February 1987 through October 1988."

Following a request for evidence on April 27, 2006, the applicant submitted yet another letter from [REDACTED] dated June 20, 2006, on his business letterhead - [REDACTED] Building & Maintenance, at [REDACTED] - stating that he had employed the applicant continuously since February 1985 at his property located at [REDACTED] in Sepulveda, and also at his private residence on [REDACTED] in North Hollywood.

On September 26, 2006 the director issued a Notice of Intent to Deny (NOID), indicating that the evidence of record was insufficient to establish the applicant's continuous residence in the United States for the requisite period to be eligible for LIFE legalization. The director granted the applicant 30 days to submit additional evidence.

In response to the NOID the applicant submitted two additional declarations from [REDACTED], both dated November 2, 2006.

- According to [REDACTED] the applicant came to her home at the age of twelve in Lancaster, California, where his mother already worked as housekeeper. Ms. [REDACTED] stated that the applicant played with her two children, who were around the same age, but did not go to school and spent a lot of time doing odd jobs and fixing things around the house. [REDACTED] reiterated that the applicant moved to North Hollywood in February 1985 to get a job.
- According to [REDACTED], he and his wife met the applicant in February 1985 when he was doing handyman work at an apartment building in the San Fernando Valley. [REDACTED] stated that when he started his business – [REDACTED] Building & Maintenance – in March 1985 he hired the applicant as the maintenance technician at [REDACTED] in Sepulveda, where he continued to work until October 1988. When [REDACTED] bought a second apartment building in 1989 he hired the applicant and his wife, who moved into the building and performed maintenance and repair work on it.

On October 19, 2006 the director issued a Notice of Decision denying the application. The director held that the evidence submitted by the applicant failed to establish that he entered the United States before January 1, 1982 and resided in the United States in continuous unlawful status from then through May 4, 1988, as required for legalization under the LIFE Act.

On appeal counsel reviews the evidence submitted by the applicant and asserts that it meets the burden of proof, by a preponderance of the evidence, that he resided continuously in the United States during the requisite period for LIFE legalization.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States in continuous unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that he has not.

There is no contemporary documentation from the 1980s that shows the applicant to have resided continuously in the United States during the requisite time period for LIFE legalization. For someone claiming to have lived in the United States at least since 1981 (in his interview on February 6, 2006 the applicant asserted that he entered the country in November 1980), it is noteworthy that the applicant is unable to produce a solitary piece of primary or secondary evidence during the following seven years through May 4, 1988.

The letters from [REDACTED], asserting that the applicant lived with her from November 1981 to February 1985, are not supported by any documentary evidence – such as school records, medical records, or even photographs – from the time period. [REDACTED] provides no information whatsoever about the applicant's whereabouts after February 1985, the time she says he left for North Hollywood in search of a job, and does not claim to know that he even remained in the United States. For the reasons discussed above, the AAO determines that the letters from [REDACTED] have limited probative value. They are not persuasive evidence of the applicant's continuous residence in the United States during the years 1981 to 1988.

As for the multiple employment letters from [REDACTED], dating from 1993 to 2006, none comports with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because they did not provide the applicant's address during the asserted initial time of employment from March 1985 to October 1988, did not declare whether the information was taken from company records, and did not indicate whether such records are available for review. Nor were the applicant's duties described in detail. Furthermore, the applicant has not submitted any earnings statements or tax records to demonstrate his employment by [REDACTED] Building & Maintenance during the 1980s. The AAO also notes that the applicant did not list any employment with that company, or at the address of [REDACTED] in Sepulveda, on the Form I-687 he submitted in 1993. The applicant stated on that document that he was employed from March 1985 to October 1988 by [REDACTED] (identified by [REDACTED] as his residence at that time) performing "cleaning" tasks. In his letter of June 20, 2006, [REDACTED] acknowledged that the applicant did some work at his private residence in North Hollywood, but indicated it was performed on Strathern Street (a later address), not on [REDACTED]. In view of the myriad omissions and inconsistencies discussed above, the AAO determines that the employment letters from [REDACTED] have limited probative value. They are not persuasive evidence of the applicant's continuous residence in the United States during the years 1985 to 1988.

Nor do the two brief statements by [REDACTED] about knowing the applicant in the late 1980s and driving him to Tijuana in July 1987 bolster the applicant's case. They are far too thin on details to have any evidentiary weight.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that he entered the United States before January 1, 1982, and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act. Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.¹

The appeal will be dismissed, and the application denied.

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

¹ The record shows that the applicant was arrested on two occasions in Norwalk, California, during the early 1990s. The first arrest was on October 20, 1991, and the charge was burglary. The evidence of record – which includes (1) an Identification Record from the Federal Bureau of Investigation (FBI), dated February 9, 2006, (2) a report from the Los Angeles Police Department, dated March 3, 2006, and (3) a letter from the Superior Court of California in the County of Los Angeles, dated June 5, 2006 – indicate that the charge was dismissed on November 26, 1991. The second arrest was on July 10, 1993, and the charge was receiving stolen property. The evidence of record – which includes (1) the aforementioned FBI Identification Record, (2) a letter from the applicant's counsel to the Southeast District, Norwalk Courthouse, dated February 5, 2007, requesting documentation about the disposition of the case, and (3) a letter from the Superior Court of California in the County of Los Angeles, City of Norwalk, dated February 6, 2007, stating that the court had no criminal record on the applicant – appears to indicate that the criminal charge of July 10, 1993 did not result in a conviction.

Thus, the record does not show that the applicant is statutorily ineligible for LIFE legalization, which would be the case if he had been convicted of one felony or three or more misdemeanors committed in the United States. *See* section 1104(c)(2)(D)(ii) of the LIFE Act and 8 C.F.R. § 245a.18(a)(1).