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U.S. Citizenship  
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Services

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FILE:

MSC 01 292 60485

Office: NEW YORK

Date:

SEP 26 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. 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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** On May 7, 2007, the District Director, New York, New York, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant failed to submit credible documents to establish, by a preponderance of the evidence, that he took up residence in the United States prior to January 1, 1982, and that he resided continuously here in an unlawful status from January 1, 1982, through May 4, 1988. The director noted that the interviewing officer was unable to verify much of the information provided by several employers.

On appeal, counsel asserts that five years elapsed between the time the applicant was interviewed and the time the director issued him a Notice of Intent to Deny on April 5, 2007. Counsel asserts that in response to the NOID, the applicant submitted his three latest tax returns and that he requested the transcript from his interview. He asserts that the director did not provide the applicant with the requested transcript.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. See § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite period, 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 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 or 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 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.12(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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden, establishing by a preponderance of the evidence, that his claim of entry into the United States before January 1, 1982, and continuous residence in the United States during the requisite period is probably true. Upon examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has failed to meet this burden.

The record reflects that on June 19, 2001, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On March 11, 2002, the applicant appeared for an interview based on the application.

The applicant has provided the following evidence relating to the requisite period:

#### Employment Letters

- An undated, unnotarized letter from [REDACTED] manager at American Diamond Construction, Inc., which states that the applicant was employed by them in January 1983 as a laborer;
- An undated, unnotarized letter from [REDACTED] "Nightowl" sales manager for the Daily News, which states that the applicant worked for the Daily News from January 1986 to February 1988;
- An undated, unnotarized letter from [REDACTED], a franchisee of Transcend Advance Development Co., which states that the applicant worked at their company from March

1982 to December 1982. [REDACTED] asserts that the applicant was brilliant, responsible, and dutiful employee; and,

- An undated, unnotarized letter from [REDACTED] from the P & F Leather Co., which states that the applicant worked for them as a helper since February 1982.

None of these letters meets regulatory standards. Specifically, the employers failed to provide the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulation, the employers failed to 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 addition, the employers failed to state what salary the applicant was paid. While [REDACTED] states that the applicant was a helper and [REDACTED] states that the applicant worked as a laborer, neither of them lists the applicant's duties with the companies. [REDACTED] do not even list the applicant's position with their companies. In addition, the letter from P & F Leather is not on company letterhead. Therefore, these letters can be accorded only minimal weight as evidence of residence during the statutory period.

#### Other letters and affidavits

- A letter sworn to on March 9, 1991, from [REDACTED] asserts that the applicant lived with him at [REDACTED] from March 1982 to January 1985. This letter can be given minimal weight as evidence of applicant's continuous residence during the statutory period; and,
- A letter dated January 4, 1991, [REDACTED] asserts that the applicant lived with him at [REDACTED] from December 1986 to February 1988.

These letters can only be given minimal weight as evidence of the applicant's continuous residence during the statutory period. Although [REDACTED] claim to have lived with the applicant for several years, they do not provide specific dates when they met the applicant, the location or the circumstances under which they met him, and do not provide any specific details of the circumstances of the applicant's residence in the United States, other than his address.

For the reasons noted above, these letters can be given little evidentiary weight and are of little probative value as evidence of the applicant's residence and presence in the United States for 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. Furthermore, while the applicant has submitted numerous affidavits in support of his

application, he has not provided any contemporaneous evidence of residence in the United States during the duration of the requisite period.

The record of proceedings contains other documents, including an affidavit sworn to on February 25, 1991, from [REDACTED] stating that the applicant has lived with him since April 1990; an affidavit sworn to on January 28, 1992, from [REDACTED] stating that the applicant has lived at his house since August 1991; and, a copy of the applicant's New York State driver license, issued on April 3, 1991. These documents all indicate physical presence after May 4, 1988, and do not address the applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have first entered the United States without inspection on November 22, 1981, and to have resided for the duration of the requisite period in New York. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has failed to do so.

Having examined each piece of evidence, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has not shown by a preponderance of the evidence he entered into the United States before January 1, 1982, and that he resided continuously in an unlawful status for the requisite period.

Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance on letters and affidavits alone, which lack relevant details, and the lack of any probative evidence of his entry and residence in the United States from prior to January 1, 1982 through May 4, 1988, the applicant has failed to establish by a preponderance of the evidence that he maintained continuous, unlawful residence in the United States as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, 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.