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U.S. Citizenship
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L2



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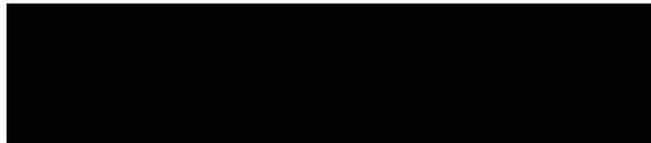
MSC 03 113 61530

Office: NEW YORK

Date: JAN 26 2009

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. All documents have been returned to the National Benefits Center. If your appeal was sustained, or if your case 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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, New York, New York. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The 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 states that he has submitted evidence from acquaintances who attest to his continuous residence in the United States during the requisite period, and, therefore, he has established eligibility for LIFE Act adjustment of status. The applicant 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), dated June 23, 2007, 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 the applicant submitted five affidavits in support of his claim, however, the affidavits were neither credible, nor amenable to verification. The director also noted that the applicant had failed to disclose that he had used different names and different dates of birth: the [REDACTED] DOBs: 2/1/63; 2/10/63; 10/2/63 and 10/2/65. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated August 15, 2007, the director denied the application. The director noted that the applicant responded to the NOID, but failed to overcome the reasons for denial as stated in the NOID.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate his continuous residence in the United States in an unlawful status, and his physical presence, during the requisite period. In an attempt to establish his continuous unlawful residence in the United States during the requisite period since prior to January 1, 1982, the applicant submitted letters and affidavits, as evidence to support his Form I-485 application. The AAO has reviewed the entire record. Here, the submitted evidence is neither probative, nor credible.

Employment Letters

The applicant submitted letters of employment, from [REDACTED], and [REDACTED] of [REDACTED]. Ms. [REDACTED] states that the applicant had been employed from 1982 to June 1986. [REDACTED] states that the applicant had been employed from 1987 to 1990. [REDACTED], however, does not indicate when in 1982 the employment began, and [REDACTED] does not indicate when in 1987 the employment began. Also, the affiants do not indicate the capacity in which the applicant was employed.

It is noted that the letters from [REDACTED] and [REDACTED] failed to provide the applicant's address at the time of employment. Also the letters failed to show periods of layoff, 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 as required under 8 C.F.R. § 245a.2(d)(3)(i). These letters, therefore, are not probative as they do not conform to the regulatory requirements.

Affidavits and letters

The applicant submitted the following:

Two affidavits from [REDACTED], dated April 24, 1989, and October 10, 1998, respectively; and, one from [REDACTED]. In his April 24, 1989 affidavit [REDACTED] states that he has known the applicant to have resided in the United States since 1982, and that the applicant lived with him since 1982. However, in his October 10, 1998 affidavit [REDACTED] states that he has known the applicant to have resided in the United States since 1981. [REDACTED] states that he has known the applicant since 1985. It is noted that [REDACTED] does not indicate how he dates his acquaintance with the applicant, or when in 1982 his acquaintance with the applicant began. Also, [REDACTED] does not indicate how he dates his acquaintance with the applicant and whether the applicant has been a continuous resident since 1985.

The record of proceedings also contains a mail envelope addressed to the applicant, at [REDACTED], Brooklyn, NY 11218. The envelope, however, is not probative as the postmarks are not clear and the authenticity of the envelope cannot be determined.

It is noted that the applicant has submitted questionable documentation. Specifically, the affidavits from [REDACTED] are not credible. [REDACTED] attests in one of his affidavits that he has known the applicant to have resided in the United States since 1982; however, in his second affidavit he states that he has known the applicant to have resided in the United States since 1981.

In addition, the record reflects that the applicant has used different names and dates of birth. Specifically, the applicant has used the [REDACTED] and DOBs: 2/1/63; 2/10/63; 10/2/63 and 10/2/65. However, the applicant has not provided an explanation as to when and why he has used these aliases and different dates of birth.

The above discrepancies put into question the applicant's claim of eligibility for adjustment of status under the LIFE Act, and his identity. Also, the discrepancies cast considerable doubt on whether any of the affidavits the applicant submitted to establish his continuous residence are genuine. This casts doubt on whether the applicant has resided in the United States since prior to January 1, 1982, as he claims. 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). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in his testimony and in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status during the requisite period.

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, and is ineligible for permanent resident status under Section 1104 of the LIFE Act.

It is also noted that the Federal Bureau of Investigation (FBI) fingerprint results report, completed in connection with his LIFE Act application, reflects that:

1. On January 15, 2002, the applicant (under [REDACTED]) was arrested by the Police Department, New York, and charged with:

CHARGE 1: PL 165.71 00 A M 3 TM COUNTER 3RD 01 2503

CHARGE 2: AC 20453 00 0 V 0 AC 01 7399

A final court dispositions reflect that on January 16, 2002, the Criminal Court of New York City, County of New York, convicted the applicant on a guilty plea to PG 240.20 "Disorderly Conduct." The court sentenced the applicant to one (1) year conditional discharge, plus one (1) day community service.

2. On October 4, 2004, the applicant (under [REDACTED]) was arrested by the Police Department, New York, and charged with:

CHARGE 1: PL 165.71 00 A M 3 TM COUNTER 3RD 01 2503

A final court disposition reflect that on November 6, 2002, the Criminal Court of New York City, County of New York, convicted the applicant on a guilty plea to PG 240.20 "Disorderly Conduct." The court sentenced the applicant to one (1) year conditional discharge, plus one (1) day community service.

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.