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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

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FILE:

MSC 01 275 60068

Office: LOS ANGELES

Date:

MAY 20 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:

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.

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, Los Angeles, and an appeal was filed before the Administrative Appeals Office (AAO). In a letter dated November 6, 2008, the AAO informed the applicant of its decision to withdraw the director's adverse finding regarding the applicant's criminal history. However, the AAO notified the applicant that the evidence submitted with the original application (Form I-485) did not meet the applicant's burden of proof in establishing that he initially entered the United States sometime before January 1, 1982 and continuously resided in an unlawful status since such date and through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act; 8 C.F.R. § 245a.11(b). The applicant was provided thirty days to respond to the notice of derogatory information.

The applicant filed a timely response on December 4, 2008 and included a number of affidavits from friends in an attempt to establish residency for the requisite period. The AAO has reviewed all of the newly submitted evidence, as well as all of the evidence previously submitted regarding residence for the requisite period. We conclude that the applicant has overcome the derogatory information outlined in the AAO letter dated November 6, 2008 and has met his burden of proof to establish eligibility for permanent resident status pursuant to the terms of the LIFE Act. The application will be granted.

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 applicant has the burden of proving 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 under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. 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.2(d)(5). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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).

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.* at 80. 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 petitioner 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 petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (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 or petition.

The issue in this proceeding is whether the applicant (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The AAO concludes that, upon review of all of the evidence of residence, the applicant’s claim is more likely true than not. *U.S. v. Cardozo-Fonseca. Id.*

The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period includes a letter from an employer dated June 14, 2001. The letter is printed on letterhead stationery and is signed by [REDACTED], Cajun Summit ARCO AM/PM. The letter states that the applicant was employed by [REDACTED] in the Summit Inn Restaurant in 1979, and also that the applicant lived in one of rooms located at the back of the restaurant. The record also contains a receipt for \$100 received from the applicant dated November 7, 1982, Receipt No. [REDACTED] as payment on an account with Econo Auto and received by [REDACTED]

Additional evidence includes a number of affidavits of relationship written by friends, including [REDACTED] and [REDACTED]. The AAO has reviewed each document in its entirety to determine the applicant’s eligibility; however, the AAO will not quote each witness statement in this decision.

The affidavits from [REDACTED] and [REDACTED] contain statements that the affiants have known the applicant for years and that they attest to the applicant being physically present in the United States during the required period. These affidavits provide concrete information, specific to the applicant and generated by the asserted associations with him, which reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits.

To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship; have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the witness affidavits indicate that their assertions are probably true. Therefore, they have significant probative value.

The affidavit from [REDACTED] states that the applicant was employed by him as a general laborer in his plaster and stucco business during 1984 and 1985, and that the applicant was paid in cash for his services. The AAO finds this statement to be of less probative weight than the affidavits listed above because it does not meet the regulatory requirements for employment records outlined in 8 C.F.R. § 245a.2(d)(3)(i) (2008).

We have also reviewed an application for temporary residence (Form I-687) that is a part of the record before the AAO. It appears that this application was never officially submitted for review. However, the applicant's address listed for November 1979 to December 1980 corresponds generally with the address listed for the applicant during that time period in the affidavit submitted by [REDACTED] and [REDACTED].

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. The affidavits discussed above and other documents in the file establish that it is more likely than not that the applicant's claim of continuous unlawful residence for the requisite period is more likely than not true.

An alien applying for adjustment of status under the provisions of section 1140 of the LIFE Act has the burden of proving by a preponderance of evidence that he or she has continuously resided in an unlawful status in the United States from January 1, 1982 to May 4, 1988, is admissible to the United States under the provisions of section 212(a) of the INA, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.11. The applicant has met this burden.

ORDER: The appeal is granted. This decision constitutes a final notice of eligibility.