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



U.S. Citizenship
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Services

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[REDACTED]

FILE: [REDACTED]
MSC 02 253 62993

Office: PHILADELPHIA

Date: **OCT 09 2009**

IN RE: Applicant: [REDACTED]

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:

[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.

[Handwritten signature]

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was initially denied by the Director, Philadelphia, Pennsylvania and came before the Administration Appeals Office (AAO) on appeal. The AAO remanded the matter to the director and the subsequent decision to recommend that the application be denied again has been certified to the AAO. This decision will be affirmed.

In the initial decision, the director concluded the applicant had not established that he had applied for class membership in any of the requisite legalization class-action lawsuits prior to October 1, 2000. In addition, the director determined the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988 as required by section 1104(c)(2)(B) of the LIFE Act and, therefore, denied the application.

On appeal from the director's initial denial, counsel reiterated the applicant's claim that he had applied for membership in one of the requisite legalization class action lawsuits. Counsel asserted that the applicant had submitted sufficient evidence to demonstrate that he resided in this country for the requisite period.

The AAO remanded the case so that director could issue a notice of intent to deny setting forth the intended basis to the applicant and counsel and allow the parties thirty days to respond prior to issuing a new decision as required by 8 C.F.R. § 245a.20(a)(2).¹ The record shows the director issued a notice of intent to deny to the parties on October 15, 2007.

In the subsequent certified denial issued November 25, 2008, the director concluded the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988 as required by section 1104(c)(2)(B) of the LIFE Act.

In response to the certified denial, counsel requested an additional thirty days to allow the applicant to obtain and submit additional evidence in support of his claim of residence in this country for the period in question. However, the record shows that as of the date of this decision, neither the applicant nor counsel has submitted a statement, brief, or evidence to supplement the record. Therefore, the record must be considered complete.

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. Section 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 periods, is admissible to the United States under the

¹ The regulation was amended so that effective June 18, 2007, the issuance of a notice of intent to deny prior to the rendering of a decision is no longer required. *See* 72 Fed. Reg. 19100 (April 17, 2007).

provisions of section 212(a) of the Immigration and Nationality Act (Act), 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).

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 to May 4, 1988, the submission of any other relevant document including affidavits is permitted pursuant to 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 "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. *Id.*

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing his continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Act, on April 3, 1990. At part #33 of this Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant

listed “[REDACTED]” in Philadelphia, Pennsylvania from December 1981 to December 1989. In addition, at part #36 of the Form I-687 application where applicants were asked to list all employment in the United States since first entry, the applicant listed “[REDACTED] (company)” as his only employment in the period in question.

Subsequently, the applicant filed his Form I-485 LIFE Act application on June 10, 2002.

In support of his claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted affidavits signed by [REDACTED] and [REDACTED]. While the affiants attested to the applicant’s residence in the United States for the period in question or a portion thereof, their testimony lacked sufficient details and verifiable information to corroborate the applicant’s residence in this country for the requisite period.

The applicant included an employment letter on the letterhead of the [REDACTED], in Brooklyn, New York that is signed by general manager [REDACTED]. Mr. [REDACTED] declared that this company employed the applicant as a laborer from February 11, 1986 to August 19, 1986. However, [REDACTED] did not provide either the applicant’s address during his employment with this enterprise or relevant information relating to the availability of business records reflecting the applicant’s employment as required by 8 C.F.R. § 245a.2(d)(3)(i). More importantly, as noted above the applicant claimed that he resided at one address in Philadelphia, Pennsylvania and had one employer, “[REDACTED] company),” during the entire requisite period on the Form I-687 application. The applicant failed to provide any explanation as to why his employment with [REDACTED], was not listed on the Form I-687 application or how he was able to work for a company based in Brooklyn, New York while he resided in Philadelphia, Pennsylvania.

Counsel’s remarks on appeal regarding the sufficiency of evidence the applicant submitted to demonstrate his residence in this country during the period in question have been considered. However, the supporting documents contained in the record do not contain specific and verifiable testimony to substantiate the applicant’s claim of residence in the United States for the period in question. In addition, the record contains testimony that did not conform and in some cases conflicted with the applicant’s own testimony relating to his claim of residence in this country since prior to January 1, 1982.

The absence of sufficiently detailed supporting documentation and the conflicting and contradictory testimony cited above seriously undermine the credibility of the applicant’s claim of residence in this country for the requisite period, as well as the credibility of the documents submitted in support of such claim. 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. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he has resided in the United States for the requisite period by a preponderance of the evidence as required under both 8 C.F.R. § 245a.12(e) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's reliance upon documents with minimal or no probative value and conflicting nature of testimony contained in the record, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988 as required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis. Consequently, the decision recommending denial of the LIFE Act application shall be affirmed.

ORDER: The certified decision recommending the denial of the application for permanent resident status is affirmed and the appeal is dismissed. This decision constitutes a final notice of eligibility.