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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
and Immigration
Services

L2

[REDACTED]

FILE:

[REDACTED]

Office: CHICAGO

Date:

AUG 04 2010

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.

Elizabeth McCormack

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, Chicago, Illinois. The appeal to this denial was initially rejected as untimely filed and the matter was then subsequently reopened by the Director, National Benefits Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because 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.

On appeal, the applicant reiterates his claim of residence in this country for the required period and asserts that he had submitted sufficient evidence in support of such claim. The applicant includes copies of previously submitted documentation in support of his appeal.

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 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 regulation at 8 C.F.R. § 245a.2(d)(3)(v) states that attestations by churches, unions, or other organizations to the applicant's residence by letter must: identify applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where applicant resided during membership period; include the seal of the organization impressed on

the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

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 or about November 1, 1990. At part #4 of the Form I-687 application where applicants were asked to list other names used or known by, the preparer indicated that the applicant had not used any other names by listing "N/A." In addition, at part #34 of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, business, etc., the preparer indicated that the applicant had no affiliations or associations with any such group by listing "N/A."

Subsequently, the applicant filed his Form I-485 LIFE Act application on September 10, 2001.

In support of his claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted two affidavits signed by [REDACTED] and single affidavits signed by [REDACTED]. While all of these 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 containing the letterhead of the [REDACTED] in Chicago, Illinois that is signed by [REDACTED] stated that he employed the applicant as cook with a salary of \$5.00 per hour from April 25, 1981 to the date the letter was executed on September 11, 1990. Nevertheless, [REDACTED] failed to provide the applicant's address of residence during this employment and 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).

The applicant provided a copy of a Form W-2, Wage and Tax Statement, reflecting wages paid to and taxes withheld from [REDACTED] by [REDACTED] in 1985. However, as noted above, the preparer of the applicant's Form I-687 application specified that the applicant had not used any other names by listing "N/A" at part #4 of the Form I-687 application where applicants were asked to list other names used or known by.

The applicant submitted letters dated September 4, 1990 and June 13, 2003 containing the letterhead of [REDACTED] in Chicago, Illinois that are signed by the [REDACTED] respectively. In the letter dated September 4, 1990, [REDACTED] indicated that the applicant attended a Graduate Equivalency Degree or G.E.D. class at this school from January 5, 1986 to December 21, 1986 and again from August 31, 1987 to August 25, 1990. In the letter dated June 13, 2003, [REDACTED] noted that the applicant was also known as [REDACTED] and had attended this institution as a student from 1986 to 1987. [REDACTED] declared that the applicant possessed an identification card that was official documentation issued in that period when he was a student. Regardless, it must be noted that a review of the record reveals that the applicant has never submitted a copy of a student identification card reflecting his attendance at this academic institution in the period from 1986 to 1987, despite [REDACTED] statement that the applicant possessed such an identification card. In addition, the record does not contain any school transcripts or records to corroborate the testimony that the applicant attended [REDACTED]. Further, [REDACTED] testimony that the applicant was a student at [REDACTED] From 1986 to 1987 does not conform with [REDACTED] testimony that the applicant attended the school from 1986 to 1990. Finally, [REDACTED] contention that the applicant was also known as [REDACTED] conflicted with the applicant's testimony at part # 4 of the Form I-687 application where applicants were asked to list other names used or known by and the preparer indicated that the applicant had not used any other names by listing "N/A."

The applicant included a letter containing the letterhead of the [REDACTED] in Chicago, Illinois, which is signed by Reverend [REDACTED] Reverend [REDACTED] stated that the applicant attended the church for some years since 1980 but that he only attended mass every now and then since he had moved out of the parish because of work. However, Reverend [REDACTED] failed to state his title with the [REDACTED] list the inclusive dates of applicant's membership, state the address where applicant resided during the membership period, establish how he knows the

applicant, and establish the origin of the information he attested to as required under 8 C.F.R. § 245a.2(d)(3)(v). Moreover, it must be noted that at part #34 of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, business, etc., the preparer indicated that the applicant had no affiliations or associations with the [REDACTED] by listing "N/A."

The director determined that the applicant failed to submit sufficient evidence demonstrating his residence in the United States in an unlawful status for the requisite period. Therefore, the director concluded that the applicant was ineligible to adjust to permanent residence and denied the Form I-485 LIFE Act application on February 1, 2005.

On appeal, counsel reiterates the applicant's claim of residence in this country for the required period and asserts that the applicant submitted sufficient evidence to support such claim. However, as has been discussed above, the record is absent credible supporting documents containing specific and verifiable testimony to substantiate the applicant's residence in this country from prior to January 1, 1982. In addition the record contains conflicting and contradictory testimony regarding critical elements of the applicant's claim of residence in the United States since prior to January 1, 1982.

The absence of sufficiently detailed supporting documentation and existence of conflicting and contradictory testimony 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, 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.

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