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U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship
and Immigration
Services



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Date: **JAN 05 2012** Office: NATIONAL BENEFITS CENTER

FILE: 

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. All documents have been returned to the office that originally decided your case. 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.

Elizabeth McCormack

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director of the National Benefits Center denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act, finding the applicant had failed to establish his continuous residence throughout the requisite period. Specifically, the director found that the applicant had several absences during the requisite period that exceeded 45 days. On appeal, the applicant asserts that he had no absences of more than 30 days. The matter is now on appeal to the AAO. The appeal will be dismissed.

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 through May 4, 1988. See § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). "Continuous unlawful residence" is defined at 8 C.F.R. § 245a.15(c)(1), as follows:

An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded *forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed.

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 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 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 (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.

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 issue in this proceeding is whether the applicant has established that he (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status throughout the requisite period. 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 consists of several witness statements, copies of postmarked envelopes, and a few paystubs dated in 1984. 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. Much of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed.

The record contains witness statements from [REDACTED], [REDACTED], [REDACTED], [REDACTED]. The statements are general in nature, and state that the witnesses have knowledge of the applicant's residence in the United States for all, or a portion of, the requisite statutory period. Two of the statements are undated, so it is unclear whether the declarants knew the applicant during the requisite period.

Although the witnesses claim to have personal knowledge of the applicant's residence in the United States during the requisite period, the witness statements do not provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations, and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence in the United States during the requisite period. To be considered probative and credible, witness statements must do more than simply state that a witness knows an applicant and that the applicant has lived in the United States for a specific period. Their content must include sufficient detail from a claimed relationship to indicate that it probably did exist and that the witness, by virtue of that relationship, does have knowledge of the facts alleged. For instance, the witnesses do not state how they date their initial meeting with the applicant in the United States, or specify social gatherings, other special occasions or social events when they saw and communicated with the applicant during the requisite period. The witnesses also do not state how frequently they had contact with the applicant during the requisite period. The AAO finds that the witness statements do not provide sufficient details that would lend credence to their claimed knowledge of the applicant's residence in the United States during the requisite period. For these reasons the AAO finds that the witness statements do not indicate that their assertions are probably true.

The applicant also submitted copies of several paystubs dated 1984 and 1987, which can be given some weight. He submitted a copy of a Texas driver's license, but the date is illegible. Finally, he submitted copies of several postdated envelopes.

The applicant submitted an employer letter from [REDACTED]. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must include: (A) Alien's address at the time of

employment; (B) Exact period employment; (C) Periods of layoff; (D) Duties with the company; (E) Whether or not the information was taken from official company records; and (F) Where the records are located and whether the Service may have access to the records. If the records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of subsections (E) and (F).

statement does not fully comply with the above cited regulation because it does not describe the applicant's job duties with the dairy company, and failed to indicate whether the information was taken from company records and why employment records were unavailable. Given these deficiencies, this letter is of minimal probative value in supporting the applicant's claims that he entered the United States before January 1, 1982 and continuously resided in the United States throughout the requisite period.

The director noted that at an interview, the applicant had testified that he had been absent from the United States at least once for more than 45 days. In response to the director's notice of intent to deny the application and on appeal, the applicant denied that he had testified to such. The officer's interview notes indicate that the applicant departed to Mexico for three months in 1982, to visit his father, who was ill, and for the holidays; for 1½ months in 1986 to get papers and to visit family; and for 2-3 months in 1987 to visit his wife and family. Other evidence of record indicates that the applicant's wife lived in Mexico and that the applicant had a child born in Mexico in 1983 and another in 1984. Given the detail of the officer's notes, and the fact that two of the applicant's children were born in Mexico in 1983 and 1984 to a mother who lived in Mexico, the AAO finds it more likely than not that the applicant remained outside of the United States for more than 45 days in 1982 and thus exceeded the forty-five (45) day limit for a single absence from the United States during the requisite period, as set forth in 8 C.F.R. § 245a.15(c)(1)(i). Consequently, the applicant cannot be considered to have continuously resided in the United States for the requisite period pursuant to 8 C.F.R. § 245a.11(b). Further, the record does not reflect that the applicant's prolonged absence from the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988) holds that emergent means "coming unexpectedly into being."

As the applicant has not established that he continuously resided in the United States throughout the requisite period, the director's decision to deny the application is affirmed.

It is noted that the applicant was arrested and charged on two felony counts of delivery of a controlled substance on December 12, 1991. The applicant provided evidence in the form of a letter from a criminal investigator with the county district attorney's office that the charge was dismissed because the case was dismissed by the investigating agency. He attached a court document indicating the charge was dismissed because the case had been refiled in the District Court for Brazoria County in the 23rd Judicial District of Texas. Case No. [REDACTED]

Thus, it is found that the applicant has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988. Accordingly, the applicant is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

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