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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 02 206 61206

Office: ATLANTA

Date:

DEC 05 2007

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. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Atlanta, Georgia, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The district director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that additional documentation establishing the applicant's continuous residence in the United States from prior to January 1, 1982 through May 4, 1988 was submitted in response to the Notice of Intent to Deny. Counsel provides copies of previously submitted documents in support of the appeal.

An applicant for permanent resident status 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. 8 C.F.R. § 245a.11(b).

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).

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence:

- Notarized affidavits from [REDACTED] formerly of Tucker, Georgia, who indicated that the applicant resided at his residence from November 1980 to March 1984 and was in his employ as a

painter from November 1980 to April 1983. The affiant asserted the applicant received his wages in cash.

- A notarized affidavit from [REDACTED] formerly of Stone Mountain, Georgia, who indicated that the applicant resided at his residence from April 1984 to May 1989.
- A notarized affidavit from [REDACTED] formerly of Doraville, Georgia, who indicated the applicant was in his employ as a painter from May 1983 to June 1986.
- A letter dated October 30, 1991 from [REDACTED] owner of [REDACTED] in Stone Mountain, Georgia, who indicated the applicant was in his employ from July 1986 to February 1991.
- A notarized affidavit from [REDACTED] of Chamblee, Georgia, who attested to have known the applicant since 1981 and has remained good friends with the applicant since that time.
- A notarized affidavit from [REDACTED] formerly of Stone Mountain, Georgia, who attested to the applicant's residence in Georgia since 1981.

In response to the Notice of Intent to Deny issued on December 27, 2004, counsel provided the following evidence:

- An additional notarized affidavit from [REDACTED] of Buford, Georgia, reaffirmed the applicant was residing with him in Decatur, Georgia at [REDACTED], from April 1984 to May 1989.
- An additional notarized affidavit from [REDACTED] of Lawrenceville, Georgia, who reaffirmed the applicant's employment as a painter from May 1983 to June 1986.
- An additional notarized affidavit from [REDACTED] of Duluth, Georgia, who reaffirmed that he has known the applicant since 1981 and attested to the applicant's residence in Georgia since that time.
- Additional notarized affidavits from [REDACTED] of Duluth, Georgia reaffirming the applicant was residing with him in East Point, Georgia at [REDACTED] from November 1980 to March 1984 and to the applicant's employment as a painter from November 1980 to April 1983.
- A notarized letter from [REDACTED] a medical doctor in Buford, Georgia, who indicated he has known the applicant since 1982.
- A notarized affidavit from [REDACTED] of Lawrenceville, Georgia, who attested to have known the applicant since 1981 and has remained good friends with the applicant since that time.

The director, in denying the application, noted that the evidence submitted by the applicant was insufficient and/or had been determined not to be credible.

The director, however, did not specify why the documentation submitted was considered insufficient or not credible. 8 C.F.R. § 103.3(a)(1)(i) states, in pertinent part, that when an officer denies an application, the officer shall explain in writing the *specific reasons* for the denial.

In this instance, the applicant submitted evidence, which tends to corroborate his claim of residence in the United States during the requisite period. The applicant provided affidavits from individuals, all whom provide their current addresses and/or telephone numbers and indicate a willingness to testify in this matter. The district director has not established that the information in this evidence was inconsistent with the claims made on the application, or that it was false information. Evidence in the record indicates that [REDACTED] and [REDACTED] affidavits had been verified through telephone conversations with an officer of Citizenship and Immigration Services. As stated in *Matter of E--M--*, *supra*, when something is to be established by a preponderance of evidence, the applicant only has to establish that the asserted claim is probably true. That

decision also points out that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. Accordingly, the affidavits proffered by the applicant may be accorded substantial evidentiary weight and are sufficient to meet his burden of proof of residence in the United States for the requisite period.

The documentation provided by the applicant supports by a preponderance of the evidence that the applicant satisfies the statutory and regulatory criteria of entry into the United States before January 1, 1982, as well as continuous unlawful residence in the country during the ensuing time frame of January 1, 1982 through May 4, 1988, as required for eligibility for legalization under section 1104(c)(2)(B)(i) of the LIFE Act.

Accordingly, the applicant's appeal will be sustained. The district director shall continue the adjudication of the application for permanent resident status.

ORDER: The appeal is sustained.