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Services

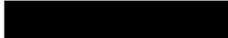
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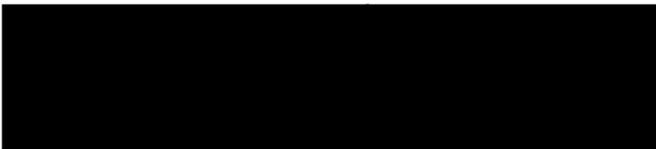
IN RE: Applicant:



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. The file has been returned to the National Benefits Center. 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.

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, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through the requisite period.

On appeal, counsel asserts that the director failed to consider all of the evidence submitted by the applicant as required by 8 C.F.R. § 245a.12(f). Counsel provided copies of previously submitted evidence for consideration.

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 “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 or 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).

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.

In the Notice of Intent to Deny (NOID), dated on or about August 21, 2004, the director stated that the applicant failed to submit evidence demonstrating his continuous unlawful residence in the United States from prior to January 1, 1982, through January 1, 1988. The director noted that the submitted paycheck stubs from Belcino, Incorporated, as well as a receipt from Western Union, only established the applicant's presence for the year 1988. The director granted the applicant thirty (30) days to submit additional evidence. The record reflects that no additional evidence was received. In the Notice of Decision, dated December 17, 2004, the director denied the instant applicant based on the reasons stated in the NOID.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status before January 1, 1982, through the December 31, 1987. The applicant submitted letters of employment and affidavits as evidence to support his Form I-485 application. Here, the submitted evidence is not relevant, probative, and credible.

Employment Letters

The applicant submitted an August 14, 1991, letter from [REDACTED], office manager of [REDACTED]. Ms. [REDACTED] stated that the applicant has been employed in the position of laquer finishing since June 21, 1985, with a salary of \$5.75 an hour. Ms. [REDACTED] failed to provide the applicant's address at the time of employment, show periods of layoff, 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 as required under 8 C.F.R. § 245a.2(d)(3)(i).

The applicant submitted four letters of employment by [REDACTED] and [REDACTED]. Mr. [REDACTED], an employee of [REDACTED], stated that the applicant worked for the company as a janitor from February 1981 to April 1982 with a salary of \$3.00 per hour. Mr. [REDACTED], a butcher of [REDACTED], stated that the applicant worked for the company as a butcher from November 1984 to June 1985 with a salary of \$5.00 per hour. Both letters of

employment are typed on a copy of the company letterhead stationery, rather than on original letterhead.

Mr. [REDACTED], a bookkeeper at [REDACTED], stated that the applicant worked for the company as a general laborer from November 1982 to December 1984 with a salary of \$3.50 per hour. Mr. [REDACTED] a truck driver for [REDACTED], stated that the applicant worked for the company from May to October in the years 1982, 1983 and 1984, and he had a salary of \$3.50 an hour. Mr. [REDACTED] also stated that the applicant's duties were planting trees, cutting tree branches, trimming bushes, planting grass and cutting grass, operating edge on weeds and edges. Both letters of employment contain a photocopy of their respective company's business card at the top of the letter, rather than original letterhead.

Pursuant to 8 C.F.R. § 245a.2(d)(3)(i), letters from employers should be on employer letterhead stationery. None of the letters of employment are on original company letterhead stationery. In addition, all the affiants provided the applicant's current address of residence, but they failed to provide the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the affiants also failed to 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. In fact, it appears that the letters were not written or provided by the actual employer. The applicant's inability to obtain authentic letters of employment seriously detracts from the credibility of his claim of continuous unlawful residence during the requisite period.

Affidavits

The applicant submitted five affidavits, which are completed on the same citizen/resident affidavit form and provide very similar information. The applicant submitted sworn affidavits by [REDACTED] and [REDACTED]. All these affiants stated that they have known the applicant since 1981 and that the applicant has been a continuous resident of the United States since that time. They provided their address, as well as the applicant's current address.

The applicant also submitted two affidavits, by [REDACTED] and [REDACTED], who completed the same citizen/resident affidavit form and provided very similar information. Both affiants stated that they have known the applicant since 1984 and that the applicant has been a continuous resident of the United States since that time. Both affiants provided their address, as well as the applicant's current address.

The applicant submitted an August 11, 1991, affidavit by [REDACTED] who stated that he has known the applicant since 1981. He stated that the applicant lived with him from April 1989 to March 1990 and shared the apartment expenses, including the light bill and gas bill. He also stated that everything was in his name and therefore the affiant cannot present any receipts or bills in his name. Mr. [REDACTED] provided his address.

The applicant also submitted an August 11, 1991, affidavit of residency by [REDACTED] Mr. [REDACTED] stated that he is the applicant's brother. He stated that they lived together in Chicago, Illinois, from October 1986 to March 1989 and April 1990 to December 1990. Mr. [REDACTED] also stated that they shared the expenses, but the bills were in his name. Mr. [REDACTED] provided his address.

Lastly, the applicant submitted an August 4, 1991, sworn affidavit by [REDACTED] who stated that he has known the applicant since 1981. He stated that the applicant left the United States from approximately November 16, 1987, to December 16, 1987. Mr. [REDACTED] provided his address.

Although the applicant has submitted numerous affidavits in support of his application, the applicant has not provided any contemporaneous evidence of residence in the United States during the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiant's identity or presence in the United States. None of the affiants indicated how they dated their acquaintance with the applicant, how they met the applicant or how frequently they saw the applicant. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon documents with minimal 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 December 31, 1987.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through December 31, 1987, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, he is ineligible for permanent resident status under Section 1104 of the LIFE Act.

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