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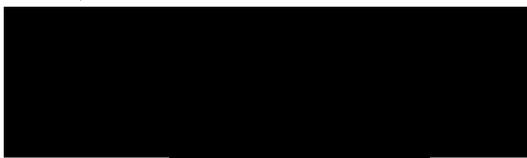
U.S. Department of Homeland Security  
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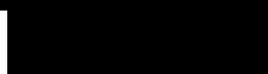
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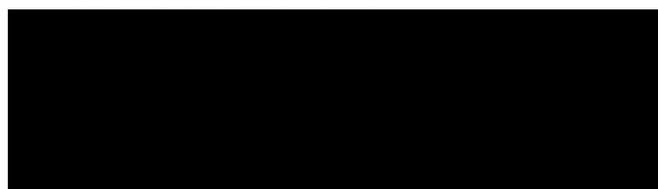
Applicant:



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.

A handwritten signature in black ink, appearing to read "R. P. Wiemann".

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, Los Angeles, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

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 the applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988.

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 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).

While there is no specific regulation which governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements which affidavits

are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information which an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to. See 8 C.F.R. § 245a.2(d)(3)(v).

Here, the submitted evidence is not relevant, probative, and credible.

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

- A letter dated March 17, 2005 from [REDACTED] stating that the applicant was a patient of [REDACTED] beginning on December 20, 1981. The applicant became Dr. [REDACTED] patient after [REDACTED] died in September 1986.
- A letter dated July 17, 2004 from [REDACTED] President of the [REDACTED] Temple, stating that he has known the applicant since the applicant began attending worship services in 1984.
- An affidavit notarized on July 16, 2004 from [REDACTED] stating that the applicant stayed for a few days at his home in [REDACTED] on or around November 1981 before moving to California.
- A letter dated January 17, 2003 from [REDACTED] stating that he provided medical treatment to the applicant on April 23, 1983, January 23, 1984 and January 31, 1984.
- A letter dated November 15, 2002 from [REDACTED] School Community Specialist at the Bakersfield Adult School, stating that the applicant was enrolled in an ESL classes from 1986 to 1988.
- An affidavit notarized on December 4, 2001 from Major [REDACTED] stating that the applicant was his "first contact" when [REDACTED] arrived in the United States in May 1984, and that he knows the applicant worked at the [REDACTED] Store in Bakersfield, California at that time until 1994.
- An affidavit notarized on November 10, 1999 in India from the applicant's father, [REDACTED] stating that the applicant has been a resident of the United States since 1981, but returned to India for approximately 5 weeks in September 1987.

- A letter dated March 21, 1991 from [REDACTED] stating that the applicant is his roommate at [REDACTED]
- An affidavit notarized on March 19, 1991 from [REDACTED] stating that he has supported the applicant as a friend in "various periods during 1981 and present."
- An affidavit notarized on March 19, 1991 from [REDACTED] stating that he has known the applicant since the applicant first came to the United States in 1981.
- An affidavit notarized on March 19, 1991 from [REDACTED] Bakersfield, California stating that he shared living quarters with the applicant from 1984 to November 1990.
- Various sales receipts dated in the year 1987.
- Receipts signed by [REDACTED] for rent paid by the applicant in June 1984, April 1985 and December 1985.
- Receipts signed by a [REDACTED] for rent paid by the applicant in December 1981, March 1982 and November 1982.
- An envelope with an illegible postmark bearing the applicant's name and address of [REDACTED] California.
- An envelope with an illegible postmark bearing the applicant's name and address of [REDACTED] California.

On June 28, 2004, the director issued a Notice of Intent to Deny (NOID) noting that the applicant "furnished no documentation in support of [his] claim of residency for the years 1981, 1982, and 1985 other than affidavits" and that these affidavits "were vague and lack corroborating evidence."

In response to the NOID, counsel submitted additional evidence of residency.

In the decision to deny the application dated February 22, 2005, the director stated that "the information [the applicant] submitted . . . failed to overcome all the grounds for denial as stated in the NOID," and denied the application.

On appeal, counsel asserts that the director abused her discretion in denying the application after the applicant had submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988.

Upon review of all the evidence in the record, the AAO determines that the submitted evidence is not sufficiently relevant, probative, and credible to meet the applicant's burden of proof. Specifically, the evidence of residency prior to 1983 is not sufficiently detailed to meet the applicant's burden of proof that he resided in the United States *continuously* during this period.

The evidence of the applicant's place of residency and employment from January 1, 1982 to May 1984 lacks detail and is not amenable to verification. The three handwritten rental receipts show rent paid for only three months during this year, do not list the address at which the applicant resided, and fail to provide any contact information for the applicant's landlord by which the information on the receipts can be verified.

The identity of the applicant's landlord from 1981 to May 1984, who apparently was also the applicant's employer for approximately the same period, is listed only as [REDACTED] on the rental receipts and is not documented sufficiently elsewhere in the record to allow for verification. On Form I-687, the applicant indicates that he was employed by [REDACTED] of the [REDACTED] California from December 1981 to March 1984, but the record contains no affidavit from [REDACTED] or other records from the [REDACTED] to corroborate the applicant's claim. Counsel indicates only that "upon arrival to California, [the applicant] met one of his friends, who offered him a job as a construction worker and rented him a room in his house." According to counsel, this house had the same address as the construction company, though the applicant lists the address of his residence as [REDACTED], rather than [REDACTED] on Form I-687. The record contains no affidavit from a [REDACTED] attesting to the applicant's residency.

The other evidence of residency for the years 1981 and 1982 lacks sufficient detail to demonstrate continuous residency. [REDACTED] attests only that the applicant stayed with him in the State of Washington for several days in November 1981. [REDACTED] and [REDACTED] state that the applicant has resided in the United States since 1981, but fail to provide an adequate basis for this knowledge. Neither lists the addresses at which the applicant resided or the frequency of his contact with the applicant during the qualifying period. Likewise, the letter from [REDACTED] indicates that the applicant was the patient of another doctor, [REDACTED], prior to September 1986, but does not indicate the dates on which the applicant saw [REDACTED] during the period from January 1, 1982 to September 1986 other than to say that [REDACTED] saw the applicant multiple times. [REDACTED] does not specify the origin of this information or provide other details concerning the applicant's treatment by [REDACTED]. The applicant submitted no medical records to corroborate the information in Dr. [REDACTED] letter. Finally, the postmarks on the envelopes submitted by the applicant are not sufficiently legible to ascertain the postmark dates.

The regulation at 8 C.F.R. § 245a.12(e) provides that "[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods." Preponderance of the evidence is defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5<sup>th</sup> ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

Given the insufficiency of the evidence submitted by the applicant, the AAO determines that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982, and resided in this country in an unlawful status continuously since that time through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b).

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