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

PUBLIC COPY

[REDACTED]

FILE:

[REDACTED]
MSC 02 005 62243

Office: DALLAS, TEXAS

Date: **MAY 02 2006**

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. 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.

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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, Dallas, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The district director determined that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel asserts that the applicant has provided sufficient and credible evidence to establish continuous residence in the United States from prior to January 1, 1982 to May 4, 1988. Counsel contends that the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) erred in denying the application in light of the totality of the circumstances.

On or about June 19, 1990, the applicant applied for class membership in a legalization class-action lawsuit. In conjunction with that application, he filed Form I-687, Application for Temporary Resident Status, pursuant to Section 245A of the Immigration and Nationality Act. Then, on October 5, 2001, the applicant filed his Form I-485, Application to Adjust to Permanent Resident Status under Section 1104 of the LIFE Act.

Such 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. See § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b).

An individual, who is applying 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 period, 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 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).

In the present case, this office finds the submitted evidence to be relevant, probative and credible.

In support of his claim of residence in the United States, since a date prior to January 1, 1982 and through May 4, 1988, the applicant submitted ten documents that effectively corroborate his claim. Specifically, the applicant submitted: five employment letters, a letter from the youth pastor at his former church, a letter from a previous landlord, a letter from a former roommate, and two letters from long-time acquaintances. All but one of the employment and church letters were either duly notarized or submitted on formal, letterhead stationary. The other relevant supporting documents were notarized, except for one document. These letters appear to be credible as well as amenable to verification - in that each included contact telephone numbers and return addresses. The applicant also submitted several receipts, which he indicated were issued to him, while in the U.S., during 1981 through 1984. These receipts do not make any specific reference to the applicant. Consequently, the probative value of these receipts is quite minimal. The applicant, also, submitted an employment letter dated August 24, 2001. This letter indicates that the applicant had been working continuously for a certain company in Dallas, from June 1988 through the date that the letter was written. That is, this letter provides evidence of the applicant's presence in the U.S. for a time frame outside the relevant statutory period and does not serve to support his claim that he was in the U.S. from a date prior to January 1, 1982 and through May 4, 1988.

In the notice of intent to deny, issued on June 9, 2003, the district director indicated that the applicant had failed to submit additional evidence of residency in support of his claim, as the Service had requested at the time of his LIFE adjustment of status interview.

In response, the applicant submitted a letter, which indicates that he had forwarded additional evidence to the Service, as requested. With this response, he re-submitted the letters and receipts, which are referred to above as well as a certified mail receipt to corroborate his claim that he had already forwarded these documents to the Service several months prior to the issuance of the notice of intent to deny.

In response, the district director determined that the applicant had failed to submit sufficient evidence to establish his continuous residence in this country since some date prior to January 1, 1982 and through May 4, 1988. The district director, therefore, denied the application on Feb. 25, 2004.

However, as noted above, the applicant did submit extensive evidence, including five employment letters, which corroborate the applicant's claims that he was living and working in the United States from 1981 through June 1988. Specifically, Park Inn International (Dallas/Fort Worth Airport South) confirmed that the applicant worked as a houseman for that company from January 1981 through January 1984. [REDACTED] confirmed that the applicant served as a farmhand on her small farm in Kennedy, Texas, from February 1984 through mid-March 1985. The owner of Dos Amigos Junk Yard,

(auto salvage), Dallas, Texas, confirmed that the applicant served as an assistant to his mechanic, installing motors, transmissions, etc. from mid-March 1985 through the end of May 1988. Also, in a notarized letter, [REDACTED] confirmed that the applicant worked part-time for her, mowing her lawn on a weekly basis from spring 1981 until she moved in 1982. (The applicant kept in contact with [REDACTED] family, and, at her suggestion, the applicant began working for the same employer as [REDACTED] in 1988.) Finally, [REDACTED] confirmed that the applicant began mowing his mother's lawn, during the summer of 1981, and, then, worked with the applicant, on Saturdays, at [REDACTED] father's lawn sprinkler business, also, during the summer of 1981. Note that this employment information, (dates of employment, work place addresses, etc.), is entirely consistent with the information that the applicant reported on his Application for Status as a Temporary Resident, Form I-687, filed on June 19, 1990. Moreover, a thorough review of the applicant's file reveals no inconsistencies or adverse information that might undercut the credibility of these documents or the other letters, which corroborate the applicant's claim of having resided in the United States from January 1981 through May 4, 1988.¹

In sum, the district director has not established: that the information on these ten supporting documents was inconsistent with the claims made on this application or previous applications; that any inconsistencies exist *within* the claims made on the supporting documents; or, that the documents contain false information. As stated in *Matter of E--M--*, *supra*, when something is to be established by a preponderance of the evidence, the proof submitted by the applicant has to establish only 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. The documents that have been furnished may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

The documentation provided by the applicant establishes, 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. Consequently, the applicant has overcome this particular basis of denial cited by the district director.

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.

¹ At one point, an immigration officer tried to telephone the applicant's former youth pastor to verify information on this pastor's letter, which the applicant submitted in support of his application. However, no one answered, when the immigration officer telephoned. No negative inference may be drawn from the fact that no one answered this telephone call.