

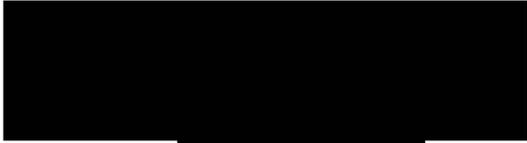


U.S. Citizenship
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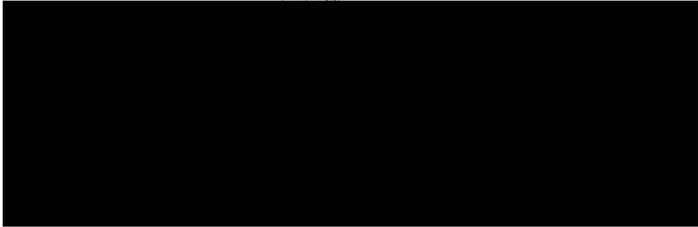
Applicant:



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:



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, Dallas, Texas, 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. Counsel provides a copy of an envelope postmarked March 7, 2006 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).

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:

- Affidavits notarized April 16, 1990 from acquaintances [REDACTED] Dallas, Texas, who indicated that they have known the applicant since 1980 and attested to the applicant's residence at [REDACTED]
- An affidavit notarized March 14, 1990 from [REDACTED] of Dallas, Texas, who indicated that he was a landlord and attested to the applicant's Dallas residence at 3215 Chihuahua from June 1, 1985 to June 1, 1986.
- A letter dated April 14, 1990 from [REDACTED] a subcontractor of [REDACTED] who attested to the applicant's employment at [REDACTED] in Dallas, Texas from October 15, 1981 through March 1, 1985.
- An undated letter from [REDACTED] vice president of [REDACTED] in Dallas, Texas, who indicated that the applicant was employed as a roofer from February 1981 to March 1986.
- An undated statement from [REDACTED] who indicated that the applicant was in his employ from June 20, 1986 through November 30, 1989.
- Several envelopes allegedly postmarked in 1981, 1982 and 1983. It is noted that some of the envelopes contain indecipherable postmarks and, therefore, the actual mailing date cannot be determined.

In a statement dated April 15, 1990, the applicant indicated that he worked for [REDACTED] Garland, Texas from March 4, 1985 to June 15, 1986. The applicant asserted that he was unable to obtain employment documentation from the company as it was no longer located in Garland.

The director, in denying the application, noted that Texas State Records reflect that [REDACTED] did not commence business until February 1, 2002. The director also noted that [REDACTED] letter contradicted the employment letter from [REDACTED]

On appeal, counsel asserts, "[t]he state business records [REDACTED] & Company Inc. may have stated 02/01/02 but [REDACTED] was, in fact, doing business in the early 1980's." Counsel also asserts that there lies no contradiction between [REDACTED] letters as the applicant "worked for both companies simultaneously; sometimes he worked one in the daytime and another in the afternoons and evenings. His duties with both companies depended upon weather conditions."

As conflicting evidence has been established, it is reasonable to expect documentation from each company in order to resolve the contradiction. Counsel, however, provides no evidence to support his assertion. The unsupported assertion of counsel does not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In addition, the applicant did not claim employment at J. Reynolds & Company, Inc., on his Form I-687 application. As such, it is determined that these letters are not plausible, credible, and consistent both internally and with the other evidence of record.

██████████ and ██████████ claimed to know the applicant since 1980, but provided no detail regarding the nature or origin of their relationships with the applicant or the basis for their continuing awareness of the applicant's residence. A review of the postal stamps on the envelopes, counsel claims were postmarked in 1981, 1982, and 1983, reveals they were not issued by the government of Mexico until at a later date.¹

These factors further undermine the applicant's credibility and raise questions about the authenticity of the documents the applicant has presented in attempt to establish *continuous* residence in the United States prior to January 1, 1982 through February 1986.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

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 (5th ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991). Given the credibility issues arising from the documentation, the virtual absence of legitimate contemporaneous documentation, and the insufficiency of the affidavits provided by the applicant, it is determined 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 from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant 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.

¹ See <http://timbresdemexico.galeon.com/mexicoexporta/index.htm>.