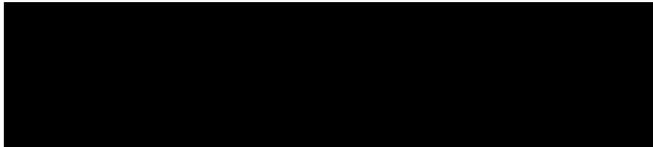


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U.S. Citizenship
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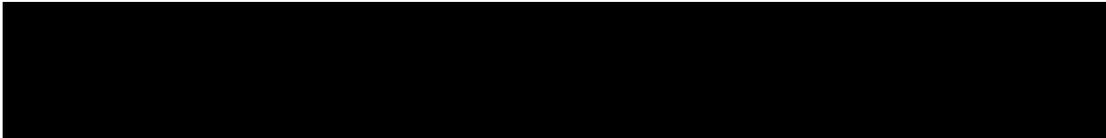
Office: LOS ANGELES

Date: APR 19 2007

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:



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.

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 evidence to establish his continuous residence by a preponderance of the evidence and the director erred in disregarding this evidence.

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).

Nevertheless, an affidavit not meeting all the foregoing requirements may still merit consideration as "any other relevant document" pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must be on employer letterhead stationery, if the employer has such stationery, and must include the following:

- (A) Alien's address at the time of employment;
- (B) Exact period of employment;
- (C) Periods of layoff;
- (D) Duties with the company;
- (E) Whether or not the information was taken from official company records; and
- (F) Where records are located and whether the Service may have access to the records.

The regulation further allows that if official company records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and explaining why such records are unavailable may be submitted in lieu of meeting the requirements at (E) and (F) above.

Here, the submitted evidence is not sufficiently 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:

- An affidavit notarized on February 27, 1991 from [REDACTED] residing at [REDACTED] in Los Angeles, California stating that the applicant has lived in the same building from November 1981 to that date.
- An affidavit notarized on February 27, 1991 from [REDACTED] of Los Angeles, California stating that she has known the applicant since November 1981 through visits made to the manager of the building in which the applicant resides.

- An affidavit notarized on February 27, 1991 from [REDACTED] of Los Angeles, California stating that he knows the applicant has resided in Los Angeles, California since October 1981 because they have associated as friends since that time.
- An affidavit notarized on February 8, 1991 from [REDACTED], manager of the apartment house at [REDACTED] in Los Angeles, California from June 15, 1987 to that date, stating that the applicant lived in apartment 33 of the apartment house from November 1981 to August 1989.
- An affidavit notarized on July 11, 1990 from [REDACTED] stating that the applicant has been working for her as a truck driver since October 1986 and worked for her as a "Helper in the sale of fruits and produce" from November 1984 to September 1986.
- An affidavit notarized on April 20, 1988 from [REDACTED] of [REDACTED] in El Monte, California stating that the applicant worked at the bakery as a baker (helper) from November 1981 through October 1984.
- A receipt dated on February 13, 1988 from [REDACTED] in Los Angeles, California bearing the applicant's name and address of [REDACTED] in Los Angeles.
- A pedestrian citation from the City of Los Angeles issued to the applicant with residence at [REDACTED] on January 9, 1986.
- A pay stub for the pay period beginning December 29, 1985 and ending January 4, 1986 issued to the applicant by ___ & R Fashion, Inc.¹
- A W-2 Wage and Tax Statement for 1985 from [REDACTED] bearing the applicant's name and the address [REDACTED] in El Monte, California.
- A State of California interim driver license and receipt issued to the applicant on September 9, 1986.
- A receipt issued to the applicant on October 4, 1985 for a State of California identification card.
- Two registered mail postal receipts with sender and receiver lines left blank and postmarked in 1981 and 1983.
- Several commercial receipts dated in the qualifying period and bearing the applicant's name.

¹ Full name of employer is illegible.

presence because they did not contain the applicant's address. Finally, the director noted that the applicant had indicated that he was paid in cash for the years 1981 through 1988, but submitted a "W2 form for the year of 1985 and a pay stub for the pay period of 12/29/85 to 1/4/86."

In response to the NOID, counsel asserted that the director failed to give the third-party affidavits submitted by the applicant sufficient weight. Counsel stated that the director should have made an "effort to verify the information contained in the affidavits before concluding that the submitted documentation was insufficient to establish the continuous physical presence requirement." Counsel requested that the director contact the affiants prior to making a final decision.

In a decision to deny the application dated December 23, 2004, the director stated that the information submitted by the applicant "failed to overcome the grounds for denial as stated in the NOID" and denied the application.

On appeal, counsel contends that the director failed to give sufficient weight to the applicant's evidence of residency. Counsel asserts that the regulations allow the applicant to establish continuous residency through "statements or other relevant documents." Counsel points out that the applicant has submitted contemporaneous documentation and detailed affidavits containing information concerning the applicant's residences and employment that is consistent with the information provided by the applicant in his application. Counsel states that director should not have disregarded these affidavits without first contacting the individuals who provided the affidavits to ascertain the credibility of the evidence. Finally, counsel asserts that the director gave "undue weight to the fact that a W-2 existed for a period of less than a week at the end of 1985 when [the applicant] testified that he had been paid in cash when he worked from 1981 to 1988." Counsel states that is not unreasonable for the applicant to have "forgotten that 18 years prior he had been paid for a few days work by check." Counsel contends that this "discrepancy" is not sufficient reason to deny the application under the preponderance of evidence standard.

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 W-2 form submitted by the applicant shows that the applicant worked in 1985 for the [REDACTED] Roofing Company, a company that does not appear as one of the applicant's employers on the applicant's Form I-687, Application for Status as a Temporary Resident. The Form W-2 lists the applicant's address as [REDACTED] in El Monte, California, the same address as the [REDACTED] where the applicant claims to have worked only until October 1984. Likewise, the pay stub submitted by the applicant shows that the applicant worked for a fashion company in 1985 and 1986, but the applicant does not list this employer on his Form I-687. Thus, the discrepancy regarding these documents goes not just to the means by which the applicant was compensated, but also to the very identity of the applicant's employers.
- [REDACTED] states in her affidavit that the applicant worked for her as a truck driver from 1986 to the date of the affidavit (July 11, 1990) and as a helper in the sale of fruits and

produce from November 1986 to September 1986. [REDACTED] does not indicate the name of any business she operated that employed the applicant, and her affidavit is not on company letterhead. [REDACTED] does not list the applicant's address or addresses during the period of employment or whether or not the information in her affidavit was taken from official company records, where such records are located and whether USCIS may have access to the records.

- The applicant indicates on his Form I-687 that he worked in "sales" for [REDACTED] from November 1984 to November 1986, but lists "driver" as his occupation during this period on his Form G-325A, Biographic Information. The applicant also lists "2 For 1 Pizza Co." at [REDACTED] in Los Angeles as his employer since 1986 on his Form G-325A. This employer does not appear on the applicant's Form-I-687, and there is no evidence in the record showing a connection between [REDACTED] and this company. Likewise, the pay stub submitted by the applicant shows that the applicant worked for a fashion company in 1985 and 1986, and there is no evidence in the record demonstrating a connection between [REDACTED] and this company.
- [REDACTED] states in his affidavit that the applicant worked as a baker (helper) from November 1981 through October 1984, but does not list the applicant's address or addresses during the period of employment or whether or not the information in the affidavit was taken from official company records, where such records are located and whether USCIS may have access to the records.
- [REDACTED] states in her affidavit that she became the manager of the apartments at [REDACTED] in June 15, 1987, but fails to state the basis for her knowledge that the applicant resided in apartment 33 from November 1981 to that date. This also raises doubts as to the testimony of [REDACTED] who states in her affidavit that she has known the applicant since November 1981 because she visited [REDACTED] at the building where the applicant resided.
- On his Form I-687, the applicant lists three different addresses as his residences from November 1981 through the date he signed the form (March 14, 1991), but lists only one address from September 1981 to October 1996 on his Form G-325A.

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).

Contrary to counsel's assertions, the evidence of residency submitted by the applicant fails to comply with regulatory evidentiary standards and contains numerous inconsistencies. It is reasonable to expect the applicant to resolve the contradictions in the evidence through explanations from the affiants

providing the contradicting testimony and through other credible evidence. Although the applicant has submitted some credible evidence showing his presence in the United States in and subsequent to 1985, the applicant has failed to present sufficient credible evidence of residency to adequately address the discrepancies noted herein and demonstrate continuous residency in the United States from before January 1, 1982 through May 4, 1988. These discrepancies raise questions about the authenticity of the remaining documents the applicant has presented in attempt to continuous residence in the United States prior to January 1, 1982 through May 4, 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 contradictions and other insufficiencies in the evidence, 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.