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FILE: [REDACTED]  
MSC 02 244 60104

Office: DALLAS

Date: FEB 01 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. 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 (AAO) 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 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:

- An affidavit notarized June 25, 1990 from [REDACTED] of Dallas, Texas, who indicated that the applicant resided with him from June 1987 to December 1988 at [REDACTED]

- An affidavit notarized June 23, 1990 from [REDACTED] of Dallas, Texas, who indicated that the applicant resided with him from February 1985 to May 1987 at [REDACTED]
- An affidavit notarized June 22, 1990 from [REDACTED] of Dallas, Texas, who indicated that he and the applicant resided together from May 1981 to December [REDACTED]. [REDACTED] asserts that he has remained good friends with the applicant since that time.
- An affidavit notarized June 20, 1990 from an acquaintance, [REDACTED] of Dallas, Texas, who attested to the applicant's residence in Dallas, Texas since May 1981.
- A letter dated June 13, 1990 from [REDACTED] (last name illegible) of Bramtex Property Service Company in Dallas, Texas, who indicated that the applicant was employed on a part-time and full-time basis as a construction helper from 1981 to 1989.
- An affidavit notarized May 15, 2002 from [REDACTED] of Dallas, Texas, who indicated that he met the applicant in July 1981 while he and the applicant were employed at Bramtex.
- An affidavit notarized May 2, 2002 from [REDACTED], Texas, who indicated that he was a co-worker of the applicant from June 1981 to September 1985 at Bramtex.

On February 27, 2003, the director issued a Form I-72, requesting that the applicant submit documentation from Bramtex establishing his employment during the requisite period. The applicant was also requested to submit evidence that [REDACTED] was in business during the period in question. The applicant, in response, submitted an additional affidavit notarized April 28, 2003, from [REDACTED], who indicated that the applicant worked under his supervision at [REDACTED] from 1981 to 1989. Mr. [REDACTED] asserted that Bramtex was no longer in business.

On August 21, 2003, the director issued a Notice of Intent to Deny, advising the applicant that he had failed to provide "any solid evidence" establishing his presence in the United States during the requisite period. The applicant was also advised that in an attempt to contact Mr. [REDACTED], Citizenship and Immigration and Services (CIS) telephoned the phone number provided, however, "he is unreachable and this is a call notes telephone number."

In response, the applicant submitted an affidavit notarized October 30, 2003, from [REDACTED], who indicated:

I'm aware of the phone calls made by the Officer handling [the applicant's] case, I tried to return those calls but it was impossible, also I was not available during the time these calls were made due to my work schedule.

Once again I affirm that [the applicant] worked under my supervision while he was working at Bramtex Property Service Co, from 1981 to 1989.

Bramtex is no longer in business but I can assure that [the applicant] is stating the true [sic] in his application for Immigration Status.

The applicant also submitted an affidavit notarized October 25, 2003 from [REDACTED] of Mesquite, Texas, who indicated that she first met the applicant in July 1981 and attested to the applicant's residence in Dallas, Texas since "May 1981."

The director, in his Notice of Decision, dated June 22 2004, noted that the applicant failed to provide any new evidence in response to the Notice of Intent to Deny. In addition, the director noted that in attempt to establish Bramtex's existence, a search was conducted through the government website for the state of Texas website and "there is no State Record for a corporation called Bramtex in 1981."<sup>1</sup>

On appeal, counsel asserts, in part:

He [the applicant] provided a letter from Bramtex Property Service Company that stated that he was a worker from 1981 to 1989. It was written on letterhead and provided a phone number for verification from the manager. The Company has since gone out of business, but the applicant also submitted a recent letter from his direct supervisor while employed at Bramtex from 1981-1989.

While some of the letters may not be perfect as to form under the regulations, they certainly rise to a level above "preponderance of the evidence" as required under the statute. Moreover, under that standard, there is nothing to question to validity or the credibility of the evidence that has been submitted. As such, since there is nothing against the weight of the evidence it would appear, that taken as a whole, it is more probable than not that the applicant was present between 1982 and 1988.

The standard used by the Examiner was much higher in that he wanted the applicant to prove "beyond a reasonable doubt" that he was here during the requisite period. Even at the higher standard, this applicant has very solid proof of his existence in the US, which was not given proper weight by the Officer.

As conflicting evidence has been established, it is reasonable to expect documentation to resolve the discrepancy. However, neither counsel nor the applicant has provided any evidence to refute the director's finding regarding the applicant's claim of employment with Bramtex during the period in question. The unsupported assertion of counsel does not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbenia*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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 (5<sup>th</sup> ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991). Based on the evidence in this case, 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

<sup>1</sup> <http://ecpa.cpa.state.tx.us/coa/servlet/cpa.app.coa.Coa.Search>.

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).

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