

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

L2

[Redacted]

FILE:

MSC 02 245 60264

Office: LOS ANGELES

Date:

JAN 23 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:

[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. Any further inquiry must be made to that office.

Robert P. Wienmann, 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, California, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the director erred in her decision “by not applying the legal principle of credible direct testimony . . . and by not accepting affidavits as evidence” to support the applicant’s claim of unlawful continuous residency during the requisite period. Counsel submits additional documentation 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. Section 1104(c)(2)(B) of the LIFE Act; 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 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 Citizenship and Immigration Services (CIS) 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

On the form to determine class membership, which he signed under penalty of perjury on February 19, 1990, the applicant stated that he first entered the United States without inspection in November 1981, when he was 13 years of age. The applicant reiterated this claim in his LIFE Act adjustment interview on December 9, 2003. On his Form I-687, Application for Status as a Temporary Resident, which he also signed under penalty of perjury on February 19, 1990, and another Form I-687 application which he

signed under penalty of perjury on March 24, 1999, the applicant stated that he was self-employed at the Packing Company from January 1981 through 1989. The applicant did not list an address for his company, but stated that he lived at [REDACTED] in Baldwin Park, California from 1981 until the date of the Form I-687 application.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant submitted the following documentation:

1. A May 15, 2002 notarized statement from [REDACTED] in which he stated that the applicant worked for him on "an average of 16 hours per week" at his car was from December 1981 to October 1988. [REDACTED] further stated that he has been "like a family" to the applicant and that they maintained a "good personal friendship." [REDACTED] reiterated these statements in a November 10, 2004 sworn declaration submitted on appeal. We note that on his Form I-687 application, the applicant did not state the nature of his business from 1981 to 1988, but indicated that he was self-employed. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).
2. A May 15, 2002 notarized statement from [REDACTED] in which she stated that she has known the applicant since 1982. [REDACTED] provided no additional information regarding her initial acquaintance with the applicant or that he had resided continuously in the United States since the inception of their acquaintance.
3. An undated statement from [REDACTED] who stated that he lived at [REDACTED] in Baldwin Park, California and that the applicant has been his neighbor since November 1986.
4. An undated statement from [REDACTED], who stated that she resided in Baldwin Park, California, that she is a close friend of the applicant's family and that she has known the applicant since 1986.
5. A February 17, 1990 statement from [REDACTED], in which he stated that he has known the applicant since March 1987. However, [REDACTED] further stated that he is aware that the applicant resided continuously in the United States since 1986 because he served as gardener for [REDACTED]'s property.
6. A declaration from the applicant's sister-in-law [REDACTED] in which she stated that she accompanied the applicant to the legacy Immigration and Naturalization Office in February 1988. However, this document is not dated or signed and therefore has no probative value.

In response to a request for evidence dated December 9, 2003, the applicant stated that he had made an error regarding his initial entry into the United States, and that he had entered in September 1981 instead of November of that year. The applicant also submitted the following documentation:

1. A March 5, 2004 sworn statement from [REDACTED], the applicant's brother, in which he stated that the applicant first entered the United States unlawfully in September 1981, and that the applicant lived with him at his residence located at [REDACTED] in Baldwin Park until December 1985, at [REDACTED] from January 1986 to January 1987 and at [REDACTED] Street from January 1987 to 1990. This information conflicts with that provided by the applicant on

his Form I-687 application, on which he stated that he lived at [REDACTED] from 1981 until the date of his Form I-687 application. The applicant also stated on his Form G-325A, Biographic Information, which he signed under penalty of perjury on May 28, 2002, that he was a student in Guadalajara, Mexico, from 1978 to November 1981, that he worked in Baldwin Park for "multiple employers" from November 1981 to September 1989, and that he lived at [REDACTED] in Baldwin Park from September 1981 to November 1989. The record contains no objective and independent evidence to resolve these inconsistencies. Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa application. *Matter of Ho*, 19 I&N Dec. at 591.

The applicant's brother also stated that he "tried to send" his brother to school, however "the school became an ordeal to him because of his difficulty to interact with other English speaking children." However, the applicant submitted no evidence of his enrollment or attendance, however short, at any school during the qualifying period.

The applicant submitted documentary evidence of his brother's presence and residence in the United States during the requisite period. Nonetheless, the documentation does not include any reference to the applicant or his presence in his brother's household during that time.

2. A March 6, 2004 sworn declaration from [REDACTED] in which he stated that he became acquainted with the applicant upon his arrival in the United States in September 1981. [REDACTED] further stated that he is aware that the applicant lived at [REDACTED] in Baldwin Park because his parents were friends with the applicant's brother. As discussed above, this information is inconsistent with statements provided by the applicant. Further, the unsupported statement of [REDACTED] does not constitute the competent objective evidence necessary to resolve this inconsistency. *Id.*
3. A March 5, 2004 sworn declaration from [REDACTED] in which he stated, in language similar to [REDACTED] that he happened to be present at the applicant's brother's house the "very moment" the applicant arrived from Mexico in September 1981. [REDACTED] also stated that the applicant lived with his brother on [REDACTED] in Baldwin. However, the applicant submitted no competent objective evidence to support this statement and to resolve the inconsistencies in his own statements. *Id.* [REDACTED] stated that he advised the applicant's brother against forcing the applicant to remain in school as the applicant had problems "interacting with his other classmates."

In response to the director's Notice of Intent to Deny (NOID) issued on July 2, 2004, the applicant submitted a notarized statement in which he now stated that he lived at the various addresses claimed by his brother, and that his brother was his legal guardian during his minority. The applicant stated that his brother was responsible for his welfare, although he worked part-time at many things, including helping his brother at Alacron Grading, washing cars, cleaning yards and the "parking company" where he worked. As discussed above, however, the applicant's statement does not rise to the level of the competent objective evidence necessary to overcome the inconsistencies in the record. The applicant submitted no objective documentary evidence such as his school attendance records, medical records, pay vouchers, or similar evidence that would confirm his presence and residency in the United States during the requisite time periods.

On appeal, the applicant submits another sworn declaration in which he states that he never went to school. This statement again is inconsistent with that of his brother and [REDACTED] who both stated that the applicant "had problems interacting with his other classmates."

While affidavits in certain cases can effectively meet the preponderance of evidence standard, the applicant's own statements conflict with those of his witnesses. Given the absence of any contemporaneous documentation and the unresolved inconsistencies in the record, it is concluded that the applicant has failed to establish continuous residence in the U.S. for the required period.

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