

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L2

[Redacted]

FILE: [Redacted] MSC 02 232 66872

Office: CINCINNATI

Date: JUL 06 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. 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, Cleveland, Ohio, and is now before the Administrative Appeals Office (AAO) 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 “did not properly evaluate the evidence” and “misinterpreted and misapplied the sworn statements submitted on behalf of the applicant.” Counsel indicated on the Form I-290B, Notice of Appeal to the Administrative Appeals Unit, that a brief and/or additional evidence would be submitted within 30 days of filing the appeal. As of the date of this decision, however, more than twenty-seven months after the appeal was filed, no further documentation has been received by the AAO. Therefore, the record will be considered complete as presently constituted.

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 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 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 a form to determine class membership, which he signed under penalty of perjury, the applicant stated that he first entered the United States on May 1, 1981, when he entered without inspection. On his Form I-687, Application for Status as a Temporary Resident, which he also signed under penalty of perjury, the

applicant stated that, during the qualifying period, he lived at [REDACTED] in Flushing, New York from May 1981 to June 1987, and [REDACTED] in Astoria, New York from September 1987 to December 1989. The applicant also stated that he worked at General Cleaning Company in Flushing from June 1981 to June 1987, and at a Texaco gas station in New York from October 1987 to December 1989.

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

1. An envelope addressed to the applicant at [REDACTED] in Flushing, New York. The envelope bears canceled postmarks dated December 19, 1981. However, one of the stamps indicates that it was issued in 1985. Therefore, it could not have been used for postage in 1981.¹
2. An April 5, 1990 affidavit from [REDACTED] in which he stated that the applicant is one of his best friends, that the applicant left the United States on August 22, 1987, and that the affiant dropped him off at the airport on that date. [REDACTED] did not indicate where he or the applicant lived at that time or the airport from which the applicant departed.
3. A December 4, 2002 notarized statement from [REDACTED] in which he verified that he had known the applicant since July 1984. [REDACTED] did not state the circumstances surrounding his initial acquaintance with the applicant.
4. A copy of a December 5, 2002 letter from [REDACTED] president of Wonder Star Construction, Inc., in which he verified that the applicant "was a permanent employee from June 1984 to September 1984," as a general laborer. A second notarized letter of the same date reiterated this information. In neither of the letters, however, did [REDACTED] state whether the information about the applicant's employment was taken from company records or the applicant's address at the time he was employed by the company, as required by 8 C.F.R. § 245a.2(d)(3)(i). According to the adjudicator's notes of February 14 and 18, 2005, [REDACTED] stated in a phone call with the district office that the applicant had worked for him "2 yr. ago," and that he began his business in 1985. [REDACTED] stated that he "always" withholds taxes on his employees, including the applicant, and promised to fax the applicant's employment records to the district office. However, these records are not included in the record of proceedings, and there is no indication that the district office ever received them.

In a Notice of Intent to Deny dated January 7, 2005, the director questioned the use of the 1984 and 1985 stamps that were allegedly used for postage "in 1981." The envelope containing the 1984 stamp appears on the envelope bearing a cancellation date of June 26, 1988. As this is outside of the qualifying period, it is not relevant for purposes of establishing the applicant's eligibility for benefits under the LIFE Act. Further, the use of a 1984 stamp in 1988 is not, without more, indicative of misrepresentation. The director also advised the applicant that the documentation that he submitted was insufficient to establish his eligibility for benefits under the LIFE Act.

¹ The applicant also submitted an envelope with a canceled postmark of June 26, 1988. As this date is outside of the qualifying period, it is not probative of the applicant's continued residence and presence in the United States from prior to January 1, 1982 through May 4, 1988.



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