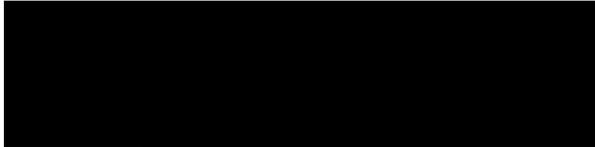




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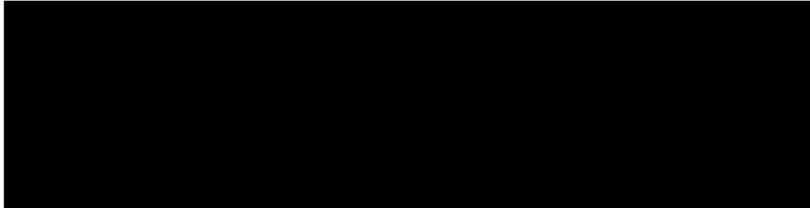
Office: CHICAGO

Date: JUN 13 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, Chicago, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 and been physically present from November 6, 1986 through May 4, 1988.

On appeal, counsel contends that the director did not properly consider all the evidence submitted by the applicant, which demonstrates that the applicant did reside continuously in the United States in an unlawful status from before 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. To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony. 8 C.F.R. § 245a.12(f). 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* sufficiently relevant, probative, and credible to meet the applicant's burden of proof.

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 May 3, 2003 from [REDACTED] of the Melrose Dental Center in Melrose Park, Illinois, stating that he has known the applicant since 1988.
- An affidavit notarized on April 29, 2003 from [REDACTED] of Chicago stating that she has known the applicant since November 1981 when the applicant was a customer at the restaurant where [REDACTED] worked. [REDACTED] states that the applicant later attended two ESL classes she taught.

- An affidavit notarized on April 29, 2003 from [REDACTED] stating that the applicant has been a client at her hairstyle salon since 1982.
- An affidavit notarized on April 28, 2003 from [REDACTED] owner of [REDACTED]'s Photo Studio in Melrose Park, Illinois, stating that he has known the applicant since April 1982.
- An affidavit notarized on May 25, 2002 from [REDACTED] of Chicago stating that he has known the applicant since September 1981.
- An affidavit notarized on August 29, 1991 from [REDACTED] of Maywood, Illinois, stating that she has known the applicant since November 1981.
- A letter dated August 27, 1991 from [REDACTED] of Los Amigos Supermarket in Melrose Park, Illinois stating that the applicant has been a customer of the store "for the last 4 years."
- An affidavit notarized on August 27, 1991 from [REDACTED] of La Nortena Food Mart in Melrose Park, Illinois, stating that he has known the applicant as a customer since July 1985.
- An affidavit notarized on August 26, 1991 from [REDACTED], owner of [REDACTED]'s Clothing & Shoes in Melrose Park, Illinois, stating that he has known the applicant as a customer since November 1985.
- A letter dated August 26, 1991 and notarized on August 30, 1991 from [REDACTED], Lay Assistant at St. Matthew Lutheran Church in Chicago, Illinois, stating that the applicant has been an active member of the parish since 1981.
- An affidavit notarized on August 26, 1991 from [REDACTED] of Chicago, Illinois, stating that she visits the applicant frequently and knows the applicant departed from the United States in 1987 for a brief period to visit his sick mother in Mexico.
- An affidavit notarized on August 22, 1991 from [REDACTED] of [REDACTED] in Chicago, Illinois stating that he has known the applicant since September 1981.
- An affidavit notarized on August 15, 1991 from [REDACTED] stating that he rented an apartment at [REDACTED] in Chicago, Illinois to the applicant from September 1981 to April 1985.
- An affidavit notarized on July 8, 1991 from [REDACTED] of [REDACTED] in Chicago, Illinois stating that he has known the applicant since September 1981.

- An affidavit notarized on July 8, 1991 from [REDACTED] of Melrose Park, Illinois, stating that she was the applicant's landlord at her residence of [REDACTED] from May 1985 to that date.
- A letter dated July 4, 1991 and notarized on August 30, 1991 from [REDACTED] Manager of [REDACTED] Food Products, stating that the company employed the applicant as a truck loader from October 1981 to January 1985.
- An undated letter from [REDACTED] Payroll Director of Labor World U.S.A., stating that the applicant was employed by the company from February 15, 1985 to September 29, 1989.

The applicant initially filed a Form I-485, Application to Register Permanent Residence or Adjust Status, on May 29, 2002. On April 11, 2003, the director issued a Notice of Intent to Deny (NOID) stating that the "evidence submitted . . . does not meet the criteria established to permit the Service to substantiate your claim to being physically present in the United States during the prescribed periods." The applicant responded by filing a second Form I-485 on June 5, 2003.

On September 1, 2004, the director issued another NOID, stating that the application would be denied and listing the same reason for denial that was stated in the previous NOID. The director also indicated that efforts to contact third party affiants [REDACTED] and [REDACTED] were unsuccessful, and the affidavit from [REDACTED] failed to list a telephone number so that [REDACTED] could be contacted.

In the decision to deny the application dated November 2, 2004, the director stated that the applicant had failed to respond to the NOID and denied the application.

On appeal, counsel contends that the director did not properly consider all the evidence submitted by the applicant, which demonstrates that the applicant did reside continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

Upon review of all the evidence in the record, the AAO determines that the submitted evidence is sufficiently relevant, probative, and credible to meet the applicant's burden of proof. As stated above, although the LIFE Act 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). In the NOID, the director incorrectly cites the regulation at 8 C.F.R. § 103.2(b) as containing the evidentiary standard applicable in LIFE Act cases.

The applicant has submitted evidence that presents a consistent account of the applicant's residency in the United States from before January 1, 1982 through May 4, 1988. This evidence includes letters and affidavits from the applicant's former employers and landlords that contain information concerning the applicant's residences and employment that is consistent with the information provided by the applicant on his Form I-687, Application for Status as a Temporary Resident. In

addition, the applicant submitted numerous affidavits from acquaintances attesting to his presence in the United States during the qualifying period. Even though these affidavits are missing some of the elements required by regulation, when the evidence submitted by the applicant is viewed in its totality, it is probative of the applicant's residency during the qualifying period.

The director did not find any inconsistencies in the evidence submitted by the applicant or between this evidence and other evidence in the record. The director states that an effort was made to contact two third party affiants, [REDACTED] and [REDACTED], but does not indicate that an effort was made to verify the applicant's residential or employment history with his former landlords and employers or to contact other third party affiants.

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). When viewed in its totality, the evidence in the record demonstrates that it is probable that the applicant resided in the United States from before January 1, 1982 through May 4, 1988.

The applicant has met his burden of proving continuous residence in an unlawful status in the United States from before January 1, 1982 through May 4, 1988. Accordingly, the applicant has established eligibility to adjust to Legal Permanent Resident status under section 1104 of the LIFE Act.

ORDER: The appeal is sustained. The application is returned to the director for adjudication consistent with the foregoing.