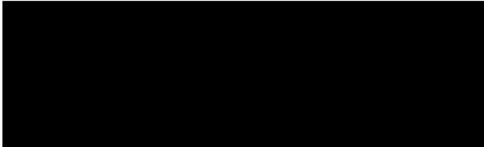


identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



L2

FILE: [REDACTED]
MSC 02 018 61118

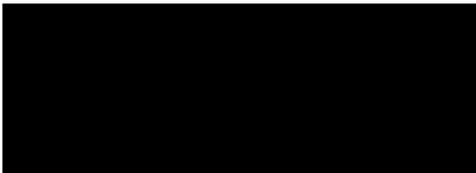
Office: PORTLAND Date:

MAR 15 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, Portland, Oregon, 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. Counsel provides additional documents 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. 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 throughout the application process:

- An affidavit dated February 8, 2005 from [REDACTED], the applicant's cousin, attesting that the applicant accompanied her and her parents, [REDACTED] and [REDACTED]

[REDACTED], as they entered the United States without inspection on January 5, 1980. [REDACTED] asserts that the her family and the applicant resided with another uncle and aunt, [REDACTED] and [REDACTED] in Corona, California until December 1983. [REDACTED] states that her father worked as a landscaper during this time, and that a “typical day for [the applicant] was to accompany my father at his work.” [REDACTED] asserts that her family and the applicant moved with the [REDACTED] to Seattle, Washington in December 1983, but after her parents “found gainful employment” they “found [their] own apartment and that during all this time [the applicant] continued to live with [them] as a family.” [REDACTED] states that both her father and mother “found gainful employment” in Seattle, Washington and that a “typical day for [the applicant] was either to accompany my father or my mother to their individual places of employment returning to our home at the end of the work day.”

- An affidavit dated September 13, 2002 from [REDACTED], the applicant’s aunt and a resident of Idaho, attesting that the applicant lived with her and her husband at their residence at [REDACTED] in Corona, California beginning on January 5, 1980, and subsequently moved with them to [REDACTED] in Seattle, Washington in December 1983. [REDACTED] states that the applicant was accompanied by his uncle [REDACTED], his aunt [REDACTED], and his cousin [REDACTED]. [REDACTED] also states that the applicant “did not work nor did he attend public school for the first ten years after his arrival in the United States due to his young age and due to his lack of ability to speak English.”
- An affidavit dated November 2, 1989 from [REDACTED], the applicant’s uncle, attesting that the applicant lived with him and his wife at their residence at [REDACTED] in Corona, California beginning in January 1980, and subsequently moved with them to [REDACTED] in Seattle, Washington in December 1983. [REDACTED] states that the applicant was accompanied by his uncle [REDACTED], his aunt [REDACTED], and their daughter [REDACTED]. [REDACTED] attests that [REDACTED] worked for him as a housekeeper and occasional seamstress. Attached to Mr. [REDACTED] affidavit are documents showing that [REDACTED] resided at the addresses listed in the affidavit.

On July 14, 2004, the director issued a Notice of Intent to Deny (NOID) advising the applicant that the application would be denied because the affidavits were not “credible and verifiable” and did not establish residency in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The director stated that the applicant’s assertion—confirmed by the [REDACTED] in her affidavit—that he did not attend school in the United States was not credible because the inability to speak English does not prevent a child from attending school in the United States. The director noted that the applicant lived in a school district required by law to provide education to all children, where it was forbidden to ask about the immigration status of children, and where bilingual aids were routinely available to help in the classroom. The director also observed that the applicant had failed to provide documentation to show that he completed confirmation or took his first communion in the United States. Finally, the director noted that although the applicant refers to Ignacio Aguilar as his uncle, [REDACTED] does not share a last name with the applicant’s father or mother, and the applicant failed to submit evidence demonstrating that [REDACTED] consistently listed the applicant as a dependant on immigration applications.

In response to the NOID, the applicant’s then representative submitted a letter dated August 12, 2004 asserting that the director erred in finding the applicant not credible merely because laws require public schools to provide education and special resources to the Spanish-speaking children of illegal immigrants. The representative cited historical discrimination as a possible factor in the decision made by the applicant’s

relatives not to enroll the applicant in public school. The representative also contended that the director made the unwarranted assumption that the applicant is an active member of a religious denomination, for which there is no evidence in the record. Finally, the representative asserted that the applicant's mother, [REDACTED] shares the name [REDACTED] with her sisters and the applicant's aunts, [REDACTED] and [REDACTED].

In the decision to deny the application dated December 15, 2004, the director acknowledged the applicant's response but observed that the applicant had not submitted additional evidence of residency and determined that the applicant had failed to meet his burden of proof. The director stated that the explanation provided by the applicant's representative for why the applicant's relatives did not enroll the applicant in public school was based on mere speculation rather than facts in evidence. The director further asserted "whether or not [the applicant was] confirmed or participated in a first communion ceremony [was] not the issue . . . but the fact [the applicant] participated in no sporting, cultural or religious events is." The director concluded by observing "the applicant's life in the United States is almost a total blank."

On appeal, counsel submits an affidavit from the applicant's cousin, [REDACTED]. Counsel asserts that the evidence provided by the applicant is sufficient to meet his burden of proof. Counsel contends that the director's assumptions concerning the experiences the applicant should have had in the United States are unwarranted and inconsistent with "the clandestine lifestyle" often chosen by undocumented aliens.

The evidence submitted by the applicant contains contradictory and inconsistent information, undermining the applicant's credibility, and is otherwise of insufficient probative value to meet the applicant's burden of proof. The applicant's assertion that he did not attend school in the United States is not so improbable that it alone renders him not credible. However, the record contains another significant inconsistency that undermines the applicant's credibility. In her affidavit, [REDACTED] indicates that she, her parents and the applicant moved out of the [REDACTED] house in Seattle, Washington into an apartment of their own "after my father and mother found gainful employment." [REDACTED] does not list the date on which this move occurred, but the remaining information in her affidavit suggests that her parents found employment in Seattle long before December 7, 1989, the date on which the applicant signed his Form I-687. For example, Ms. [REDACTED] indicates that the applicant's daily routine generally consisted of accompanying her parents to their work. It is therefore likely that the move occurred prior to December 7, 1989. Nevertheless, on his Form I-687, the applicant lists the [REDACTED] residence at [REDACTED] in Seattle, Washington as his only residence from January 1984 through the date he signed the form. Notes taken by the interviewing officer at the time of the applicant's interview indicate that the applicant testified consistently with the information submitted on his Form I-687. In his affidavit dated November 2, 1989, [REDACTED] also indicates that the applicant still lived at his residence as of that date.

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). As the applicant has submitted the contradictory evidence, it is reasonable to expect the applicant to provide an explanation in order to resolve the contradiction. As the applicant has failed to do this, the evidence containing this contradiction is not credible. This contradiction raises questions about the credibility of the remaining evidence the applicant has presented in attempt to prove continuous residence in the United States prior to January 1, 1982 through May 4, 1988.

Regardless, the remaining evidence submitted by the applicant is of insufficient probative value to meet his burden of proof. The applicant submitted three affidavits as evidence 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, but the record lacks affidavits from the applicant's guardians during this time, [REDACTED] and the applicant has provided no explanation as to why he has not submitted evidence from them. According to their daughter, [REDACTED] the applicant's daily routine consisted of accompanying her parents to their places of employment. This is the only evidence provided by the applicant showing his activities during the relevant period. Given the inconsistency in the evidence relating to the applicant's place of residence in Seattle, Washington, this lack of detail concerning the applicant's activities, and the lack of firsthand account of these activities from either [REDACTED], the applicant's evidence is insufficient under the circumstances of this case.

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 contradicting information and absence of a plausible explanation, 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.