

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



L2

FILE:



Office: DALLAS

Date:

OCT 02 2007

MSC 02 127 63387

IN RE:

Applicant:



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, Dallas, Texas, 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 states that the applicant "provided enough evidence to cover the entire period from January 1, 1982 through May, 1988," and that the affidavits submitted by the applicant "are clearly verifiable." Counsel submits a copy of a memo from the Director, Eastern Regional Processing Facility 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.

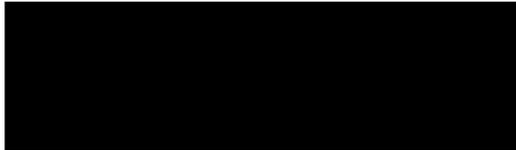
Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. See *U.S. v. Cardozo-Fonseca*, 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).

In an affidavit to determine class membership, which he signed under penalty of perjury on December 20, 1990, the applicant stated that he first arrived in the United States in November 1980, when he crossed the border without inspection at twelve years of age. On his Form I-687, Application for Status as a Temporary Resident, which he also signed under penalty of perjury on December 26, 1990, the applicant stated that he was financially supported by his father from November 1980 to December 1985. The

applicant further stated that from January 1986 to December 1987, he worked for [REDACTED] in Ranger, Texas and from January 1988 to the date of the Form I-687 application for [REDACTED] Painting in Dallas. The applicant also stated that he lived at the following addresses in Texas:

November 1980 to March 1983
March 1983 to January 1986
January 1986 to December 1987
January 1988



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

1. A December 13, 1990 affidavit from the applicant's father, in which he verified that the applicant lived with him from November 1980 to the present. However, although not providing a specific date, the applicant's father also stated that the applicant moved to Ranger, Texas to work for a farm before returning to live with him in January 1988. This would appear to be consistent with the applicant's claim on his Form I-687 application that he lived in Ranger from January 1986 to December 1987.

However, in a February 28, 2005 affidavit, the applicant's father stated that the applicant lived with him in Dallas from November 1980 to November 1990. He stated that they lived at [REDACTED] from November 1980 to March 1983; at [REDACTED] 1983 to January 1986; and at [REDACTED] from January 1986 to November 1990 when the applicant married and his father moved out. This statement contradicts the earlier statements of the applicant on his Form I-687 application and his father's earlier statement that the applicant lived in Ranger for two years before returning to Dallas. 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 December 17, 1990 affidavit from [REDACTED] in which she stated that the applicant had continuously resided in the United States since November 1980. [REDACTED] did not state her relationship with the applicant or the basis of her knowledge regarding his residency in the United States.
3. A December 19, 1990 affidavit from [REDACTED], in which she stated that she met the applicant at a Christmas reunion party in December 1980, and that he had resided in the United States continuously since that time.
4. An August 6, 2003 sworn statement from [REDACTED] in which she stated that the applicant is her nephew, and that upon his arrival in the United States, the applicant lived with her father for four years, after which he went to live with his father. [REDACTED] did not provide the address at which the applicant lived with her father. This statement is inconsistent with that of the applicant on his Form I-687 application, in which he stated that he was financially dependent on his father for support. The statement is also inconsistent with that of the applicant's father, who stated that the applicant lived with him upon his arrival in the United States.

5. An August 6, 2003 sworn statement from [REDACTED] in which she certified that she had known the applicant since 1980, and that when she came to the United States, she went to his house. [REDACTED] did not state when she arrived in the United States or the date that she first met the applicant.
6. Copies of Form 1040, U.S. Individual Income Tax Return, for the applicant's father. The returns indicate that they are for the years 1982 through 1985. However, the returns for 1982 and 1983 are on tax year 1984 forms. Additionally, the 1983 and 1985 forms are dated in July and August 1988, and the others contain no date. Accordingly, the returns are not contemporaneous evidence of the applicant's presence in the United States during the required time frame. Furthermore, there is no evidence that these forms were ever filed with the Internal Revenue Service (IRS). In response to the director's Notice of Intent to Deny (NOID) issued on February 9, 2005, the applicant submitted a February 18, 2004 IRS Letter 1722(ICP), indicating that the applicant's father filed a tax return in 1986 and claimed six exemptions, but there was no record that he filed a return for 1987. However, as discussed above, the evidence indicates that the applicant was not living with his father during 1986 and 1987.
7. A February 19, 2005 notarized statement from [REDACTED], in which he stated that he knew the applicant had been in the United States for 22 years. [REDACTED] did not state his relationship with the applicant, the circumstances surrounding his initial acquaintance with the applicant or the basis of his knowledge of the applicant's residency in the United States.
8. A March 6, 2005 notarized affidavit from [REDACTED] in which he stated that he knew the applicant had been in the United States for 22 years. [REDACTED] did not state his relationship with the applicant, the circumstances surrounding his initial acquaintance with the applicant or the basis of his knowledge of the applicant's residency in the United States.
9. An October 25, 1990 affidavit from [REDACTED], in which he stated that the applicant worked for him from January 1986 to December 1987 on his farm at Box 16 in Ranger, Texas. [REDACTED] while stating that employment records were not maintained, did not indicate the source that he relied upon in providing the information about the applicant's employment and did not provide the applicant's address at the time of his employment. We note that the applicant claimed the farm address as his residence address during this time. 8 C.F.R. § 245a.2(d)(3)(i).
10. An October 28, 1990 notarized statement from [REDACTED], in which he stated that he knew the applicant, and that he had worked for [REDACTED]'s neighbor, [REDACTED] from about 1986 to 1987. [REDACTED] did not state when he became acquainted with the applicant.
11. A December 1990 affidavit from [REDACTED] in which he stated that the applicant began working for him in January 1988. [REDACTED] did not indicate the source that he relied upon in providing the information about the applicant's employment and did not provide the applicant's address at the time of his employment. *Id.*

The applicant has submitted inconsistent evidence regarding his residency in the United States during the qualifying period. Additionally, both of the applicant's employers state that they do not maintain company records, but do not provide any source that they relied upon in providing information regarding the applicant's employment. The applicant submitted no documentation such as canceled paychecks or similar documentation to corroborate his employment with these individuals. Given this, it is concluded

that the applicant has failed to establish by a preponderance of the evidence that he resided continuously in the United States for the required period.

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