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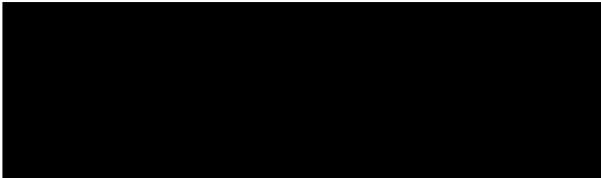
Applicant:



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. 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, Dallas, Texas, 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 met the burden of proving by a preponderance of the evidence that he resided in the United States during the requisite period. Counsel asserts the sufficiency of the applicant's evidence must be judged according to its probative value and credibility.

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).

"Continuous unlawful residence" is defined at 8 C.F.R. § 245a.15(c)(1), as follows: An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded *forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to

*emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed.

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:

- A notarized affidavit from [REDACTED] of Dallas, Texas, who indicated the applicant resided in his home in Dallas at [REDACTED] October 1981 to May 1986.
- A notarized affidavit from [REDACTED] of Dallas, Texas, who indicated he and the applicant shared an apartment and shared all expenses since 1986.
- A notarized affidavit from [REDACTED] of Dallas, Texas, who indicated the applicant arrived in Dallas in October 1981 and attested to the applicant's character.
- A notarized affidavit from [REDACTED] of Dallas, Texas, who indicated that he has known the applicant since 1982 and attested to the applicant's character.
- A letter dated February 27, 1990, from [REDACTED], owner of The Porterhouse in Dallas, Texas, who indicated that the applicant has been in his employ since January 1982.

At the time of his LIFE interview, in the presence of an officer of Citizenship and Immigration Services, the applicant was placed under oath and admitted in a signed sworn statement on June 1, 2004 that he departed the United States in 1983 and returned in 1989.

On June 29, 2004, the director issued a Notice of Intent to Deny, which advised the applicant of his sworn statement and that he had exceeded the forty-five (45) day limit for a single absence from the United States during the requisite period, as set forth in 8 C.F.R. § 245a.15(c)(1).

The applicant, in response, asserted that he was residing and working in Illinois at the time of his apprehension. The applicant asserted he was attaching two employment letters "reflecting that I worked in Illinois from 01 19 1982 to 1983." The applicant submitted:

- A notarized affidavit from [REDACTED] of Dallas, Texas, who attested to the applicant's residence in the United States since December 1979. The affiant attested to the applicant's residence at [REDACTED] Texas in 1981. The affiant asserted that he and the applicant rented the house.
- A notarized affidavit from [REDACTED], Texas, who indicated that the applicant resided in his home from July 1983 to November 1989 at [REDACTED] Austin, Texas. The affiant asserted that the applicant was in his employ as a construction concrete worker during this time-period and received his wages in cash.
- A notarized affidavit from [REDACTED] of Cicero, Illinois, who indicated that the applicant resided with him at [REDACTED] from January 1982 to January 1983.
- A notarized affidavit from [REDACTED], Illinois, who indicated the applicant worked as a dishwasher under his supervision at [REDACTED] in Chicago from January 1, 1982 through July 5, 1983.
- An identification card issued in December 1979, which expired in 1981 and listed the applicant's address as [REDACTED]

The applicant asserted, in part:

You are informed that even though I signed a sworn statement as indicated above, I did so because of a misunderstanding. During the interview with the Immigration Officer, I informed her that I had voluntarily deported to Mexico sometime in 1983 after I had been picked up by the INS on my way to work in Illinois. However, I returned back to Austin, Texas within a day; I did not return to Illinois. The INS officer then asked me when I entered the country. I responded that I entered the USA in 1979. The INS officer apparently misunderstood and thought I said that I had re-entered the USA in 1989 after the voluntarily deportation in 1983. She then entered some information on a paper and handed it to me to sign. You are informed that prior to my stating I had voluntarily deported in 1983, the INS officer said everything appeared to be fine and when she handed the paper to me to sign, it was written in English and I was unable to read it even though I did not ask the INS officer to explain it to me. I made the mistaken assumption that I was going to receive my resident card and I was signing some type of clearance form. I did not know that it related to my absence from the USA in 1983. Had I known that, I would have not signed the statement and explained that I left in 1983 but returned within a day after returning to Mexico.

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). In the instant case, the documents submitted in an attempt to resolve the inconsistency have been discredited. Specifically:

1. [REDACTED] attested to the applicant's residence at [REDACTED] and to his employment as a construction worker from 1983 to 1989. The applicant, however, did not claim either this residence or employment on his Form I-687 application.
2. [REDACTED] and [REDACTED] attested to the applicant's residence and employment in Illinois in 1982 and 1983; however, the applicant did not claim any residence in Illinois on his Form I-687 application.
3. [REDACTED] attested to the applicant's residence at [REDACTED] Texas in 1981. Although the applicant presented an identification card listing this address, he did not claim to have resided at this residence on his Form I-687 application during the period in question.

In addition, the applicant, in response to the Notice of Intent to Deny, asserted that he resided and worked in Illinois from January 19, 1982 to 1983. The applicant, however, did not claim any residence or employment in Illinois on his Form I-687 application.

On appeal, counsel submits a copy of the applicant's identification card that was previously provided along with a letter dated March 1, 2005 from [REDACTED], owner of [REDACTED] Farm in Edgewood, Texas. [REDACTED] indicated the applicant was in his employ at [REDACTED] Nursery, Inc. from 1979 to 1984 in Richardson, Texas. However, the applicant did not claim this employment on his Form I-687 application.

The statements of counsel on appeal regarding the amount and sufficiency of the applicant's evidence of residence have been considered along with the applicant's statement in response to the Notice of Intent to

Deny. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant continuously resided in the United States during the requisite period as he has presented contradictory and inconsistent documents, which undermines his credibility. As such, the affidavits from [REDACTED] have no probative value or evidentiary weight and raises questions to the authenticity of the remaining affidavits.

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 (5<sup>th</sup> ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991). Given the credibility issues arising from the documentation provided by the applicant, it is determined 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 from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

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