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U.S. Citizenship  
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FILE:

MSC 02 241 60345

Office: HOUSTON

Date:

**APR 01 2008**

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. The file has been returned to the National Benefits Center. 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, Houston, Texas. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The district director denied the application on the ground that the applicant failed to respond to a request for evidence to establish that he had entered the United States before January 1, 1982, and had resided continuously in the United States from then through May 4, 1988.

On appeal, the applicant asserts that he did respond to the request for evidence and provides copies of the evidence previously submitted.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. See section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

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 its amenability to verification. See 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).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The applicant filed his application for permanent resident status under the LIFE Act (Form I-485) on May 29, 2002. In the Notice of Intent to Deny (NOID), dated May 25, 2005, the district director noted the applicant's claim to have entered the United States without inspection in 1980 and to have lived in the United States unlawfully since then except for several short trips to Mexico. The district director acknowledged that the applicant had provided documentary proof of his residence in the United States from 1990 onward, but pointed out that the record contained no documentary evidence that the applicant was in the United States during the requisite period – from January 1, 1982 to May 4, 1988 - except for affidavits provided by friends and acquaintances. The director granted the applicant thirty (30) days to submit additional evidence.

On June 27, 2005 the district director denied the application on the ground that the applicant did not respond to the NOID and therefore had failed to establish that he entered the United States before January 1, 1982 and had resided continuously in the United States from then until May 4, 1988.

The applicant, through counsel, filed a timely appeal on July 26, 2005. On appeal, the applicant submits an affidavit asserting that he responded in a timely manner to the NOID. A review of the record reflects that the applicant's assertion is correct. On June 27, 2005, the applicant submitted four affidavits from acquaintances. The documents provided by the applicant in response to the NOID were also resubmitted with the appeal.

The four additional documents provided include notarized affidavits dated in June 2005 from: (1) [REDACTED] identified as a United States citizen and resident of Jacinto, Texas, who states that he has personally known the applicant since and unspecified date in 1981, that they met at family gatherings, and have been friends since then; (2) [REDACTED] identified as a lawful permanent resident of the United States and resident of Galena Park, Texas, who states that he has known the applicant since February 1985 since they both work at the same place, see each other almost every day, and live in the same neighborhood; (3) [REDACTED], who states that he was introduced to the applicant in January 1984 when he (the affiant) came to live in Galena Park, Texas, that they became good friends and frequent each other on a regular basis. Mr. [REDACTED] also states that the applicant lived at [REDACTED] at that time, and now lives at [REDACTED].

Street – both in Galena Park; and (4) [REDACTED], identified as a United States citizen and resident of Baytown, Texas, who states that he has personally known the applicant since an unspecified date in 1988. Mr. [REDACTED] also states that he drives commercial trucks for a living and gets a chance to meet a lot of people from different places, and that when he met the applicant they talked about a lot of things.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO concludes that he has not.

The applicant has not provided any contemporaneous evidence for the years 1982-1988 that demonstrates his residence in the United States during that time. The only documentation contained in the record to establish the applicant's presence in the United States during the requisite period consists of affidavits from acquaintances that provide little detail about the basis of the affiants' recollections nearly a quarter of a century later, or the nature and extent of their interaction with the applicant from 1982 through 1988. The absence of detailed documentation to corroborate the applicant's claim of continuous residence and continuous physical presence for the requisite time period detracts from the credibility of his claim. In accordance with 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility, and its amenability to verification. Given the applicant's reliance upon minimal documentation with little probative value, he has failed to establish his continuous residence in an unlawful status in the United States from before January 1, 1982 through May 4, 1988.

Thus, the applicant has failed to establish his entry into the United States prior to January 1, 1982, and his continuous unlawful residence in the United States for the time period specified in section 1104(c)(2)(B)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A). Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

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