

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

L2

**PUBLIC COPY**

[REDACTED]

FILE:

MSC 02 054 62126

Office: SACRAMENTO

Date:

**APR 01 2006**

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:

[REDACTED]

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, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director concluded that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982, through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act, and was continuously physically present in the United States from November 6, 1986, through May 4, 1988, as required by section 1104(c)(2)(C) of the LIFE Act.

On appeal, counsel asserts that the director's denial "relied almost exclusive on a statement [the applicant] asserts was made under duress," and apparently did not consider any of the additional documentation that the applicant provided in support of his LIFE Act application. The applicant provides additional documentation 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).

During his LIFE Act interview on August 25, 2003, the applicant executed a sworn statement in which he stated that he first arrived in the United States "after 1983." The applicant subsequently attempted to withdraw this statement, alleging in a September 8, 2003, sworn declaration that the interviewing officer "trapped" him into writing and signing the document and that he did so "under duress."

In a memorandum to the file, the interviewing officer substantially corroborates several of the incidents reported by the applicant, but places a different interpretation and emphasis on the occurrences. A review of the applicant's sworn declaration, the statement of the interviewing officer, the I-877, Record of Sworn Statement in Administrative Proceedings, and the applicant's August 25, 2003, sworn statement reveals that there was no overt coercion by the interviewing officer. However, considering the circumstances of the interview, it is conceivable that the applicant believed he had no choice but to state that he arrived in the United States "after 1983." Accordingly, the AAO will not consider the statements made by the applicant in his August 25, 2003, interview and will base its decision on all other evidence of record.

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).

On a form to determine class membership, which he signed under penalty of perjury, the applicant stated that he first arrived in the United States in February 1981, when he crossed the border without inspection. A copy of the form shows that the month in the date was altered from February to March; however, there was no alteration in the year. In an April 14, 2000, sworn statement, the applicant stated that he arrived in the United States in March 1981. The record also contains copies of a January 14, 2002, deposition given by the applicant in connection with *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) on January 23, 2004, in which he alleged that he arrived in the United States in March 1981.

On his Form I-687, Application for Status as a Temporary Resident, which he signed under penalty of perjury on January 18, 1990, the applicant also stated that he first arrived in the United States in February 1981. A copy of the form was altered to reflect the month as March. The applicant stated that he lived at [REDACTED] in Altadena, California from February 1981 until the date of his Form I-687 application. The altered version of the Form I-687 application indicates that the applicant lived at this address from September 1981. In block 36 of the Form I-687 application, where he was requested to list his employment since his arrival in the United States, the applicant stated that he worked at a 7-11 Store from March 1981 to May 1984 and at [REDACTED] Liquor from July 1984 until the date of the Form I-687 application. The applicant recertified this information on a Form I-687 application that he signed on January 25, 2001.

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

1. An undated “affidavit” from [REDACTED] in which he stated that the applicant worked for him from March 1981 to June 1984. In another undated statement, Mr. [REDACTED] verified that the applicant worked at 381 East Garvey “since March, 1981 to May 1984.” Mr. [REDACTED] signature appears over the annotation “7-11 Food Store 381 E. Garvey Monterrey Park, CA.” In yet another copy of an undated statement, [REDACTED] stated that the applicant had been employed by [REDACTED] Liquor, Inc. from July 1984 “till now.” None of these employment letters conform with the requirements of 8 C.F.R. § 245a.2(d)(3)(i) in that they do not indicate whether the information regarding the applicant’s employment was taken from company records or the applicant’s address at the time he worked for [REDACTED]. Mr. [REDACTED] provided no information as to the source he used to date the applicant’s employment, and the applicant submitted no documentation to corroborate his employment with [REDACTED]. In a January 18, 1990, affidavit, [REDACTED] stated that he was a friend of the applicant.

In a September 20, 2001, notarized statement, [REDACTED] certified that the applicant worked for him at his different stores while continuously residing at [REDACTED] in Altadena from 1981 to November 1989. Mr. [REDACTED] did not state whether he was the owner of the building in which the applicant lived, but stated that the applicant paid a monthly rent of \$150 and that there was no lease agreement. In a separate notarized statement of the same date, he reconfirmed the applicant's employment from 1981 to March 1990, again failing to provide information as to the source of his knowledge regarding the applicant's employment.

2. A January 18, 1990, affidavit from [REDACTED], in which he stated that he was a friend of the applicant and to his personal knowledge the applicant had lived at [REDACTED] in Altadena since 1981. The affiant did not indicate the duration of his relationship with the applicant or how he dated the applicant's arrival in the United States.
3. A January 18, 1990, affidavit from [REDACTED] in which he stated that he was a friend of the applicant and to his personal knowledge the applicant had lived at [REDACTED] in Altadena since 1981. The affiant did not indicate the duration of his relationship with the applicant or how he dated the applicant's arrival in the United States.

The employment statements and notarized statements from [REDACTED] have little evidentiary weight or probative value as they do not provide all of the basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). The applicant provided no documentation, such as pay stubs, pay vouchers, or other documentation to corroborate his employment with [REDACTED].

As stated in *Matter of E-M-*, in evaluating the evidence, we must look at both the quantity and quality of the evidence. While affidavits in certain cases can effectively meet the preponderance of evidence standard, in this case, the applicant's evidence consists solely of statements from three friends, who merely assert that the applicant had been in the United States since 1981. The applicant provided no contemporaneous documentation or statements from disinterested third parties. We find that the evidence submitted by the applicant fails to establish that it is more likely than not that he resided in the United States in a continuous unlawful status from before January 1, 1982, through May 4, 1988, or that he was continuously physically present in the United States from November 6, 1986, through May 4, 1988.

Accordingly, it is concluded that the applicant has failed to establish continuous residence and continuous presence in the U.S. for the required period.

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