



U.S. Citizenship
and Immigration
Services

L2

PUBLIC COPY
Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

[REDACTED]

FILE:

Office: DALLAS

Date: AUG 05 2008

MSC 03 246 61624

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. 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.

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, 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 failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status for the requisite statutory time period.

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 copies of previously submitted documentation in support of the appeal.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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).

In the Notice of Intent to Deny (NOID), dated September 21, 2005, the director referenced the information previously submitted on behalf of the applicant and concluded that the applicant had failed to provide credible and verifiable evidence of entry into the United States prior to January 1, 1982 and unlawful presence during the required time period through May 4, 1988. The director reviewed the evidence submitted in response to the NOID and found that the applicant had provided conflicting evidence and thus had not established eligibility to adjust status to legal permanent status under the LIFE Act provisions.

The AAO has reviewed the record in its entirety. In addition to the Form I-485, the record also includes a copy of a Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act), apparently submitted to establish the applicant's eligibility for class membership in a class action lawsuit filed against the predecessor to Citizenship and Immigration Services (CIS). On the Form I-687, signed by the applicant, the applicant indicates he last entered the United States in 1980 without inspection at Laredo, Texas; that his addresses for the pertinent time period were [REDACTED], Dallas, Texas from February 1980 to April 1986 and [REDACTED], Dallas, Texas from April 1986 to the date of signing the application; and that he worked for [REDACTED], as a laborer from March 1981 to February 1990. The applicant submits:

- An August 7, 1990 affidavit signed by [REDACTED] who declares that he employed the applicant from March 1987 through February 1990 as a laborer and that he paid the applicant's weekly wages in cash.
- An August 11, 1990 affidavit signed by [REDACTED], Supervisor at Western Concrete Construction Company in North Richland Hills, Texas who declares that he employed the applicant as a contract laborer from March 1981 through February 1987 and that he paid the applicant's wages in cash.
- An August 6, 1990 affidavit signed by [REDACTED] as a representative of a landlord who declares that the applicant lived at [REDACTED], Dallas, Texas from February 1980 to April 1986 and that the applicant paid rent in cash when he was employed. The affiant states that official records of residence were not maintained; thus are not available.
- An August 6, 1990 affidavit signed by [REDACTED] as a representative of a landlord who declares that the applicant lived at [REDACTED], Dallas, Texas from April 1986 to the date of the affidavit and that the applicant paid rent in cash when he was employed. The affiant states that official records of residence were not maintained; thus are not available.

- An August 8, 1990 affidavit signed by [REDACTED] who declares that he has known the applicant for ten years as a friend and co-worker from 1980 until the date of the affidavit. The affiant also indicates that he is the applicant's foreman.
- An August 9, 1990 affidavit signed by [REDACTED] who declares that he has known the applicant for nine years as a friend and that he and the applicant see each other on a regular basis.
- A December 16, 2003 affidavit signed by [REDACTED] owner of Azteca Concrete Contractor, Inc., in Del Valle, Texas, who declares that he has been in business over 30 years and that he employed the applicant from 1982 through 1984 as a laborer and that the applicant was paid in cash weekly.
- A December 8, 2003 letter signed by [REDACTED] who certifies that the applicant attended English as a Second Language class at the De Golyer Elementary School from June 1987 to May 1993. Ms. [REDACTED] identifies herself as the applicant's teacher.
- An October 17, 2005 letter signed by [REDACTED] certifying that the applicant attended English as a Second Language class at the De Golyer Elementary School from June 1987 to May 1993. Ms. [REDACTED] identifies herself as the applicant's teacher.
- A December 8, 2003 letter signed by [REDACTED] who indicates that he worked as a clerk at the De Golyer Elementary School and that the applicant attended English as a Second Language class from June 1987 to May 1993.
- An October 18, 2005 affidavit signed by [REDACTED], the applicant's brother-in-law, who declares that he has known the applicant for almost 30 years; that the applicant entered the United States in January 1980 and came to live with him and that when the affiant moved, the applicant moved with him; that all the bills and receipts [concerning the premises] were in the affiant's name; and that the applicant has continued to live with him during the pertinent time period and until the date the affidavit was signed.

The applicant also provides an affidavit dated October 19, 2005 wherein the applicant declares: that he entered the United States approximately January 28, 1980; that during the pertinent time period he lived with his brother-in-law from when he first entered the United States to June 1994 and subsequently; that, because he could not find employment when he first entered the United States, he made and sold tacos outside bars for approximately eight months; that he started working for [REDACTED] an individual in an apartment complex where the applicant had lived, in March 1981; that [REDACTED] was the supervisor of Western Concrete Construction and that he continued working for him to February 1987; that the affidavit of [REDACTED] contains an error as [REDACTED] was not his foreman as indicated on the affidavit signed by [REDACTED], but rather was his friend and co-worker who would guided the applicant on how to do his job better; that when [REDACTED] did not have enough work for him, he would work "on and off" for [REDACTED] in the time period between 1982 and 1984; that he began working for [REDACTED] in March

1987 until February 1990; that the person who filled out the Form I-687 incorrectly listed [REDACTED] as his employer from March 1981; and that he has not had anything in his name until the year 2000, rather everything was in his brother-in-law's name.

On appeal, counsel for the applicant asserts that the documentation submitted contains explanations for any perceived inconsistencies and is substantive evidence that the applicant entered the United States prior to January 1, 1982 and resided in the United States for the applicable time period.

The AAO has reviewed the affidavits submitted to establish the applicant's employment for the requisite time period. The AAO finds that the applicant's explanation regarding work conducted for two different employers during the same time period a reasonable explanation. Likewise, the AAO finds that a company does not have to be incorporated to employ workers. Therefore, the AAO does not find the lack of proof of incorporation materially inconsistent with the assertions that the applicant worked with Azteca Concrete. However, 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 affidavits submitted to establish the applicant's employment during the requisite time period do not comply with these requirements. Though relevant, the affidavits are thus deficient, do not have significant evidentiary weight, and are not probative in this matter.

The AAO has also reviewed the form affidavits in the record regarding the applicant's presence in the United States. The form affidavits from: [REDACTED] and [REDACTED] state generally that the affiants have known the applicant since 1980 or 1981. The affiants do not provide any substantive details of the events and circumstances surrounding the initial relationship and subsequent interaction between the affiants and the applicant that is sufficient to establish the applicant's continuous presence in the United States for the requisite periods. The AAO does not find these affidavits probative as these affidavits do not contain sufficient, consistent corroborating detail of the relationship and interaction of the affiants and the applicant.

The AAO has also reviewed the affidavits submitted by the applicant's brother-in-law, [REDACTED]. The three affidavits signed by [REDACTED] have been submitted to establish that the applicant lived with his brother-in-law from his initial entry into the United States to the date he filed the application. The AAO is aware of the difficulty in establishing residence of 30 years ago. However, neither [REDACTED] nor the applicant provides a shred of corroborating evidence to substantiate the applicant's residence, and Mr. [REDACTED]'s statements lack detailed information about the applicant's life and activities, generated during the asserted shared living arrangement, that would demonstrate that the affiant and the applicant had indeed resided together for the asserted periods. [REDACTED] affidavits are insufficient to establish the applicant's continuous residence in the United States from prior to January 1, 1982 to June 1987.

The AAO has reviewed the letters submitted by the clerk and teacher certifying that the applicant attended English as a Second Language classes at the De Golyer Elementary School and finds these letters sufficient to establish the applicant's presence in the United States from June 1987.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he has continuously resided in the United States in an unlawful status beginning prior to January 1, 1982, to June 1987. The applicant has submitted deficient affidavits as described above and has not provided contemporaneous, credible evidence of his residence in the United States prior to January 1, 1982 to June 1987. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period detracts from the viability of his claim. Pursuant to 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 amenability to verification. Given the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, to June 1987.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence to June 1987, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, he 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.