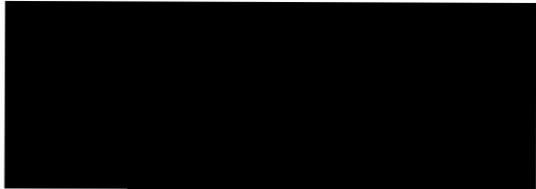


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FILE: [REDACTED]
MSC 02 228 61922

Office: CHICAGO

Date: **AUG 12 2008**

IN RE: Applicant: [REDACTED]

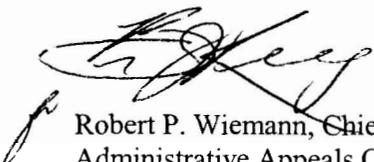
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.


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 (director) in Chicago, Illinois. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that he resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal counsel asserts that the director did not properly consider the evidence in the record and reiterates the applicant's claim to have resided in the United States continuously in an unlawful status since 1981.

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, as well as 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, a native of Mexico who claims to have lived in the United States since January 1980, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on May 16, 2002. At that time the record included the following evidence of the applicant's residence in the United States during the 1980s, all of which had been filed in 1993:

- An affidavit by [REDACTED], the owner of a restaurant called [REDACTED] on [REDACTED] in Chicago, dated April 13, 1993, stating that he had known the applicant and his family as customers since 1986.
- An affidavit by [REDACTED] the owner of [REDACTED]'s Barber Shop on [REDACTED] Street in Chicago, dated April 14 1993, stating that he had known the applicant as a customer since 1982.
- An affidavit by [REDACTED], the owner of P [REDACTED] on [REDACTED] in Chicago, dated April 14, 1993, stating that he had known the applicant as a customer since 1984.

An affidavit by [REDACTED], the owner of Supermercado [REDACTED] on [REDACTED] in Chicago, dated April 14, 1993, stating that he had known the applicant as a customer since 1985.

- An affidavit by [REDACTED] the owner of [REDACTED] Jewelers in Chicago, dated April 22, 1993, stating that he had known the applicant as a customer since 1983.
- An affidavit by [REDACTED], a dentist at the Pilsen Family Dental Center, dated April 22, 1993, stating that he had known the applicant as a patient since 1987

An affidavit by [REDACTED], the owner of a pants store in Chicago called La Caperucita, dated April 26, 1993, stating that he had known the applicant as a customer since 1985.

An affidavit by [REDACTED] la, the owner of a business in Chicago called Panaderia Nuevo Leon, dated May 14, 1993, stating that he had known the applicant as a long-term customer since 1982.

An affidavit by R [REDACTED] ra, pastor of Christian Mission Church in Cook County, Illinois (exact address not provided), dated May 14, 1993, stating that he had known the applicant as an active member of the congregation since 1981.

- An affidavit by [REDACTED] the owner of [REDACTED] Roofing in Chicago, dated May 22, 1993, stating that the applicant worked for him as a roofer in the summer months during the time period of January 1982 to March 1989.
- An affidavit by [REDACTED] and [REDACTED], dated June 3, 1993, stating that the applicant resided at [REDACTED] in Chicago from 1980 to 1988, and at [REDACTED] from 1988 to 1990.

On June 6, 2003, the director issued a Notice of Intent to Deny (NOID), indicating that the evidence of record was insufficient to establish his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

In response the applicant submitted the following additional documentation pertaining to his residence in the 1980s:

An affidavit by [REDACTED] s, the owner of [REDACTED] s Roofing a [REDACTED] in Chicago, dated September 25, 2001 and executed on July 1, 2003, stating that the applicant worked for him as a roofer during the period from January 1982 to March 1988.

A notarized letter by [REDACTED], the owner of [REDACTED] Auto Glass at an unstated address in Illinois, dated June 25, 2003, stating that he had known the applicant since 1982, that he was a leader in church, a good husband, and a good father to his three children.

- An affidavit by [REDACTED] io, pastor of the Iglesia Puerta al Cielo, a Christian church at an unspecified address, dated June 25, 2003, stating that he had known the applicant since 1982, that he was a leader in church, a good husband, and a good father to his three children.

An affidavit by [REDACTED], the owner of Supermercado La Vina at an unspecified address in Cook County, Illinois, dated June 25, 2003, stating that he had known the applicant from the church "Upper Room" since 1982.

A notarized letter by [REDACTED] dated June 25, 2003, stating that she had known the applicant from the church "Upper Room" since 1982.

- A notarized letter by [REDACTED], dated June 25, 2003, stating that she had known the applicant from the church "Upper Room" since 1982.

An affidavit by [REDACTED] dated June 25, 2003, stating that she had known the applicant from the church "A Posento Alto" since 1980.

- An affidavit by [REDACTED], dated June 25, 2003, stating that he had known the applicant from the church "Upper Room" since 1982.

An affidavit by [REDACTED], dated June 25, 2003, stating that she had known the applicant from the church "Upper Room" since 1982.

- An affidavit by [REDACTED], dated June 25, 2003, stating that she had known the applicant from the church "Upper Room" since 1982.
- A notarized letter by [REDACTED] and [REDACTED], residents of Chicago, dated June 22, 2003, stating that they had known the applicant since 1982.
- A notarized letter by [REDACTED], a resident of Chicago, dated June 20, 2003, stating that he had known the applicant, a neighbor, since 1982.
- A letter by [REDACTED], a resident of Chicago, dated June 20, 2003, stating that he had known the applicant, a long-time neighbor, since 1982.
- A letter by [REDACTED], a resident of Chicago, dated June 20, 2003, stating that he had known the applicant, a long-time neighbor, since 1982.

A notarized letter by [REDACTED] a resident of Chicago, dated June 20, 2003, stating that she had known the applicant, a long-time neighbor, since 1982.

On December 20, 2004, the director denied the application. The director found that the documentation submitted in response to the NOID was insufficient to overcome the grounds for denial. The director concluded that the evidence of record failed to establish that the applicant entered the United States before January 1, 1982 and thereafter resided continuously in the United States in an unlawful status through May 4, 1988, as required for legalization under the LIFE Act.

The applicant filed a motion to reopen and reconsider, which was denied by the director on September 2, 2005.

On appeal, counsel reiterates the applicant's contention that the previously submitted affidavits are "more than enough" evidence to warrant a favorable decision. Counsel indicates that additional evidence was attached to the appeal, but no such documentation accompanied the Form I-290B.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. In accord with the director's decision, the AAO determines that he has not.

There is no contemporary documentation from the 1980s that shows the applicant to have resided continuously in the United States during the requisite time period for LIFE legalization. For someone claiming to have lived and worked in the United States since January 1980, it is noteworthy that the applicant is unable to produce a solitary piece of primary evidence during the following eight years through May 4, 1988.

The employment affidavits from [REDACTED] in 1993 and 2003, stating that the applicant worked for him as a roofer during the years 1982-1989, do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because they do not provide the applicant's address at the time of employment, do not identify the exact period of employment and the periods of layoff, do not declare whether the information was taken from company records, and do not indicate whether such records are available for review. In view of these multiple infirmities, the employment affidavits have little evidentiary weight.

In a similar vein, the affidavits from [REDACTED] and [REDACTED], pastors at the Christian Mission Church (Iglesia Puerta al Cielo), do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(v), which specifies that attestations by religious and related organizations (A) identify the applicant by name, (B) be signed by an official (whose title is shown), (C) show inclusive dates of membership, (D) state the address where the applicant resided during the membership period, (E) include the organization seal impressed on the letter or the letterhead of the organization, (F) establish how the author knows the applicant, and (G) establish the origin of the information about the applicant.

affidavit is vague about when the applicant became associated with the church, providing only a year (1981) without further detail. The affidavit does not state where the applicant lived at any point in time between 1981 and 1988. The affidavit does not include an impressed seal or letterhead of the church. Nor does [REDACTED] provide specifics about how he knows the applicant and the origin of his information, stating only that he has known the applicant since 1981 without giving a specific date, describing the circumstances of their initial

meeting, and indicating whether his information is firsthand or based primarily on church records. Since the affidavit does not comply with sub-parts (D), (E), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), the AAO concludes it has little probative value. The affidavit from Mr. [REDACTED] has even less. It does not indicate when the applicant joined the church and does not identify the applicant's address at any time during the 1980s. Nor does the affidavit offer any details about how [REDACTED] knows the applicant and the origin of his information. While stating that he has known the applicant since 1982, [REDACTED] does not give a specific date, describe the circumstances of their initial meeting, and indicate whether his information about the applicant is firsthand or based primarily on church records. Since the affidavit does not comply with sub-parts (C), (D), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), the AAO concludes it has little probative value.

Thus, the affidavits from [REDACTED] and [REDACTED] are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

As for the other affidavits, notarized statements, and letters from individuals who claim to have known the applicant during the 1980s, they provide almost no information about his life in the United States and their interaction with him over the years. Only one of the documents – the affidavit from [REDACTED] and [REDACTED] in 1993 – indicates where the applicant was living, much less identifies a specific address for him, during the years 1981-1988. Aside from [REDACTED], only one individual – [REDACTED] – claims to have known the applicant before 1982, and even her affidavit is questionable in this regard since the numeral "0" is written over the numeral "2" – showing that [REDACTED] originally wrote 1982 as the year she met the applicant. As discussed by the director in his initial denial, many of the affidavits, notarized statements, and letters use identical language, which obviously included little personal input by the authors, and many of them lack fundamental information from the authors, such as their own addresses. Furthermore, none of these documents was accompanied by any evidence from the authors – such as photographs, letters, and the like – of their personal relationship with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the affidavits, sworn statements, and letters in the record have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under 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.

The appeal will be dismissed, and the application denied.

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