

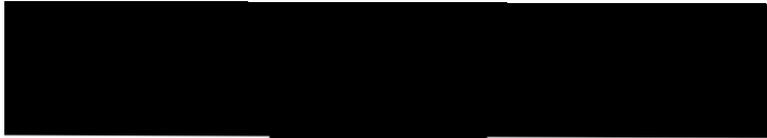
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, D.C. 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



L2

FILE: MSC 02 253 61349 Office: LOS ANGELES Date: **AUG 27 2008**

IN RE: Applicant:



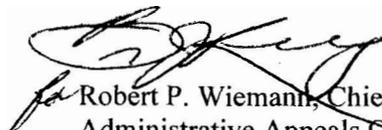
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. 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, Los Angeles, California, 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 established by a preponderance of the evidence that he resided in the United States during the requisite period.

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. Section 1104(c)(2)(B)(i) of the LIFE Act; 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).

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 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 during the requisite period. Here, the applicant has failed to meet this burden.

Along with his LIFE application, the applicant provided the following evidence in an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988:

- A rent receipt dated June 14, 1985 for residence at [REDACTED] Montebello, California.
- A bank receipt from Mutual Savings and Loan Association in Pasadena, California dated June 14, 1983.
- A PS Form 3806, Receipt for Registered Mail, postmarked October 18, 1982.
- A money order receipt issued on December 21, 1985.
- Two pay stubs made out to the last name of [REDACTED] from [REDACTED] c., in Kline, South Carolina dated February 15, 1982 and November 1, 1981.

The pay stubs and money order receipt have no evidentiary weight or probative value as the applicant's name is not listed on the money order receipt and the applicant's full name is not listed on the pay stubs from [REDACTED]

On February 27, 2006, the director issued a Notice of Intent to Deny, which advised the applicant that the documents submitted were insufficient to establish that he entered the United States prior to January 1, 1982 and resided continuously since that date through May 4, 1988.

Counsel, in response, asserted that, by a preponderance of the evidence, the applicant has established that he has resided in the United States during the requisite period. Counsel submitted copies of documents that were previously provided along with the following:

- A letter dated July 2, 2003, from [REDACTED] n, pastor of St. Matthias Catholic Church in Huntington Park, California, who indicated that the applicant has been an active member of its parish since February 1982.
- An affidavit notarized September 14, 2004 from [REDACTED] of South Gate, California, who indicated she has known the applicant since 1982. The affiant asserted that the applicant "became friends with my children at that time and has been a family friend since then." **The affiant attested to the applicant's residences in Los Angeles and Montebello since 1982.**
- An affidavit notarized September 21, 2004, from J [REDACTED], who indicated that the applicant was employed at Sunrise Laundry from "June 1987-1990."
- An affidavit notarized July 15, 2003, from [REDACTED] n of Huntington Park, California, who attested to the applicant's residence in Los Angeles since April 1982. The affiant asserted that he and the applicant are from the same town in Mexico and he met the applicant again in the United States in April 1982. The affiant asserted that he has maintained a close friendship with the applicant since that time.

On appeal, counsel argues that the evidence submitted should be accorded substantial evidentiary weight and is sufficient to meet the applicant's burden of proof of his residence in the United States during the requisite period.

The statements issued by counsel have been considered. 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 since before January 1, 1982, through May 4, 1988. Specifically:

1. The letter from [REDACTED] has little evidentiary weight or probative value as it does not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, the pastor does not explain the origin of the information to which he attests. In addition, the applicant did not list any affiliation with a religious organization during the requisite period at item 34 on his Form I-687 application.
2. The employment affidavit from [REDACTED] failed to include the applicant's address and duties at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the affiant also failed to 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.
3. On his Form I-687 application, the applicant claimed employment at [REDACTED], from October 1981 to June 1982. As previously mentioned, the pay stubs do not establish that the applicant was employed at this farm as they only listed a last name. The applicant did not provide any other documentation from the farm in an effort to establish his employment.
4. The applicant claimed on his Form I-687 application to have resided in South Carolina from October 1981 to February 1982. However, the applicant provided no evidence such as affidavits from affiants who could attest to his residence during this period.
5. The applicant was 13 years of age when he claimed to have entered the United States. As the applicant was a minor, it is conceivable that he would have been residing with an adult during the period in question. The applicant's failure to provide the name of the individual he resided with along with an attestation from said individual raises serious questions about the credibility of his claim.
6. On his Form I-687 application, the applicant claimed employment at Los Panchos Restaurant from June 1984 to August 1986; however, he did not provide any evidence to support this employment.
7. The affidavits from [REDACTED] and [REDACTED] only serve to establish the applicant's presence in the United States since April 1982.

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the remaining evidence. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

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.

Finally, the record reflects that the applicant has been convicted of violating section 23152(b), CVC, driving with .08 percent or more alcohol in the blood on January 17, 1995 in Case no. [REDACTED]. While this conviction does not render the applicant ineligible pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a), the AAO notes that the applicant does have a misdemeanor conviction.

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