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U.S. Citizenship  
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FILE: [Redacted]  
MSC 01 359 62321

Office: CHICAGO

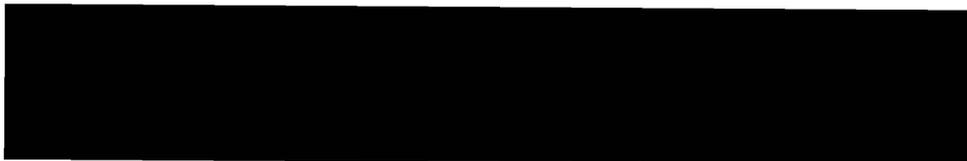
Date: FEB 07 2008

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.

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

The director denied the application because the applicant failed to establish that he entered the United States before January 1, 1982, and that he resided continuously in the United States in an unlawful status since that date through May 4, 1988.

On appeal, counsel asserts that the director did not adequately consider the evidence submitted in this case. Counsel contends that the director failed to specify why the evidence submitted was not sufficient to issue a favorable decision. Counsel attaches previously submitted evidence.

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.* at 80. 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 applicant has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (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.

In the Notice of Intent to Deny (NOID), dated August 26, 2004, the director stated that the evidence submitted by the applicant failed to establish he was illegally and physically present in the United States from January 1, 1982, through May 4, 1988. The director noted that there had been no evidence of the existence of primary or secondary evidence to establish the applicant's claim. The director granted the applicant thirty (30) days to submit a rebuttal or additional evidence. Although the director incorrectly applied the regulation at 8 C.F.R. § 103.2(b) to the instant application, it is harmless error because the AAO conducts a *de novo* review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.12(f).

In a letter, dated September 22, 2004, counsel asserted that the NOID did not specify the reasons why the applicant's evidence was not sufficient. Counsel further asserted that the submitted affidavits must be given full weight and consideration.

In the Notice of Decision (NOD), dated February 14, 2005, the director determined that applicant did not present any new evidence to overcome the reasons for denial stated in the NOID. The director denied the instant application and determined that the applicant was ineligible for adjustment of status under LIFE Legalization.

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 before January 1, 1982, through the duration of the requisite period. Here, the totality of the evidence is not sufficient.

In support of his application, the applicant submitted six subscribed and sworn affidavits by [REDACTED]

[REDACTED] These affidavits are virtually identical with the exception of the affiant's name, date of birth and address. All of the affiants stated that the applicant resided in the United States before 1982. All of the affiants provided their identification, address of residence, and telephone number. Only one affiant, [REDACTED], stated that he had first-hand knowledge of the applicant's entry into the United States. Three of the affiants stated that they knew the applicant entered the United

States illegally because the applicant told them. The lack of first-hand knowledge and poor quality of the affidavits detracts from the credibility of the affiants.

The applicant submitted over fifteen fill-in-the-black affidavits. The affidavits stated that the applicant resided in the United States in the years ranging from 1981 to 1990. All of the affidavits are virtually identical with the exception of the affiant's information and, in some instances, one sentence about the affiant's relationship to the applicant. All of the affiants stated that the applicant continuously resided at [REDACTED] during the period of acquaintance. All of the affiants attached a photograph of the applicant and included their addresses of residence.

The applicant has submitted numerous affidavits in support of his application. While the sheer number of affiants willing to corroborate the applicant's claim is considerable, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Here, the quality of the evidence is poor. The majority of affidavits consist of fill-in-the blank forms with virtually identical wording and generic information. These affidavits provide minimal probative value.

The applicant also submitted a September 15, 2003, letter by [REDACTED] owner of El Alamo Mexican Store, who stated that the applicant has been a weekly customer since 1982 to the present. The affidavit provides minimum probative value as it fails to declare whether the information was taken from store records or from another source. Although not required, the affiant failed to include any supporting documentation of the affiant's identity or presence in the United States or of his relationship with the applicant.

The applicant also submitted a November 22, 2005, letter by [REDACTED] (illegible handwriting), president of La Tejanita Restaurant, who stated that the applicant worked for the restaurant from 1981 to 1993. The affiant also provided a similar letter on August 7, 2001. The affiant failed to 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 as required under the regulation at 8 C.F.R. § 245a.2(d)(3)(i). The lack of details detracts from the credibility of the affiant.

The applicant submitted photocopies of his Form 1040A, U.S. Individual Income Tax Return, for the years 1987 and 1988. He also submitted a ticket confirmation invoice, dated February 20, 1988, for travel from Chicago to Monterrey on February 23, 1988, as well as a receipt for the ticket. The above evidence is credible evidence of the applicant's residence in the United States in 1987 and 1988. The evidence also corroborates the applicant's claim of a brief absence from the United States in February 1988 to March 1988.

With the exception of 1987 and 1988, the applicant has not provided sufficient credible, contemporaneous evidence of residence in the United States during the duration of the requisite period. The absence of sufficiently detailed and supported documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility 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, through May 4, 1988.

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 through May 4, 1988, 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.