



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted]
MSC 02 247 63369

Office: EL PASO

Date: FEB 26 2008

IN RE: Applicant: [Redacted]

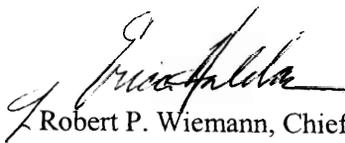
PETITION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF PETITIONER:

[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. Any further inquiry must be made to that office.


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, El Paso, and is now before the Administrative Appeals Office 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 since before January 1, 1982 through May 4, 1988.

On appeal, counsel contends that the director failed to adequately consider the totality of the evidence and documentation submitted. He resubmits a letter from the applicant's former Farm Labor Contractor, which he contends establishes the applicant's presence in the United States during the early part of the requisite period. Although counsel requested an additional 30 days in which to submit a brief and/or evidence in support of his appeal, as of this date, no additional brief or evidence has been submitted into the record of proceedings.¹

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. 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).

When something is to be established by a preponderance of the evidence it is sufficient that the proof establish that it is probably true. *See Matter of E-- M--*, 20 I&N Dec. 77 (Comm. 1989).

Although 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).

During the applicant's interview on September 16, 1981, he claimed to have entered the United States in November 1981. In an attempt to establish his entry prior to January 1, 1982 and his continuous unlawful residence through May 4, 1988, the applicant submitted the following evidence:

- (1) Handwritten, undated statement of applicant, claiming he entered the United States in 1981. In this statement, he claimed he began working by cleaning yards with [REDACTED]. He claimed that from 1982 to 1984, he worked "on the filed" for [REDACTED]. In 1985, he claims he went to Amarillo, Texas and worked for [REDACTED]. In 1986, he claims he moved to Tucumcari, New Mexico and worked there until 1989 and an unidentified job.

¹ The AAO sent a fax to counsel on December 18, 2007 to verify whether a brief had in fact been submitted in support of the appeal. As of the date of this decision, no response has been received. The appeal as it currently stands will be considered complete.

- (2) Handwritten note from [REDACTED] of G & S Electric, claiming that the applicant resided in Tucumcari, New Mexico, from 1986 to 1989.
- (3) Handwritten letter dated June 2, 2003 from [REDACTED] claiming that he worked with the applicant from approximately January 1982 thru May 1982 cleaning yards, ditches, or performing other manual labor.
- (4) Notarized statement dated November 27, 1993 from [REDACTED] who states that he has known the applicant and his family since 1982. No additional information is provided.
- (5) Notarized statement dated August 23, 1993 from [REDACTED] who states that he has known the applicant since 1981. Although he provides the applicant's current address, he provided no other details, such as the applicant's address in 1981 or the nature of their acquaintance.
- (6) Notarized statement dated November 27, 1993 from [REDACTED] who states that he has known the applicant since 1982. No additional information is provided.
- (7) Affidavit dated November 16, 1993 by [REDACTED] and [REDACTED], claiming that the applicant left the United States on March 2, 1988 and returned on April 2, 1988.
- (8) Letter dated June 4, 2003 from [REDACTED], Farm Labor Contractor, claiming that the applicant worked for him from September 1, 1981 through May 1, 1985. He claims that no "700 Series" INS forms were filled out by him on behalf of the applicant.

Subsequently, the director sent the applicant a notice of intent to deny, which requested that the applicant submit additional evidence of continuous unlawful residence in the U.S. from January 1, 1982 through May 4, 1988. In a response dated December 3, 2003, counsel submitted the following documentary evidence:

- (1) Letter dated November 18, 2003 from C-A Electric Company, claiming that the applicant worked for the company from 1986 to 1989 from time to time as a laborer on an "as-needed" basis. Although copies of several checks issued to the applicant were submitted, only one, dated March 14, 1988, was issued during the requisite period. In addition, although copies of three weekly time tickets were submitted, only two, dated December 19, 1987 and February 5, 1988, were legible and pertained to the relevant period.
- (2) Notarized handwritten letter dated December 1, 2003 by [REDACTED] of G & S Electric, claiming that the applicant resided in their apartment and worked for the company from March 1986 to January 1989. It is noted that the handwriting on this notarized statement matches the handwritten note by [REDACTED], thereby calling into question the legitimacy of the notary who claims the document was executed by [REDACTED].

The director denied the application on January 30, 2004, noting that all the documentation submitted in response to the NOID pertained to 1985 and after, and failed to address the period from before January 1, 1982 to 1985. On appeal, counsel re-submits the letter from [REDACTED], and claims that this

document establishes the applicant's entry before January 1, 1982 and continuous unlawful residence through 1985.

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 quality 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.

Here, the submitted evidence is not relevant, probative, and credible.

The applicant in this case claims that he has resided continuously in the U.S. since November 1981, a period in excess of 23 years. Nevertheless, he has only been able to provide CIS with a handful of affidavits and informal letters from alleged employers in support of his claim of residence.

Although the applicant claimed during his interview on September 16, 2003 that he entered the United States in November 1981, he likewise claims that he entered without inspection. **Therefore, there is no** documentation of his entry, such as arrival records or a stamped passport, to corroborate this claim. More importantly, however, is the claim by [REDACTED] Farm Labor Contractor, who claims that the applicant began working for him in September 1981, two months *prior* to the date the applicant alleges he first entered the country. Moreover, the applicant's handwritten statement submitted with the application **claims he did not work for [REDACTED] until 1982.** It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). 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 visa petition. *Id.* at 591 (BIA 1988).

Furthermore, despite the number of letters submitted from previous employers, they all lack the basic elements required by 8 C.F.R. § 245a.2(3)(i). For example, the letter from [REDACTED], in addition to the contradictions discussed above, fails to state the applicant's address during the period of alleged employment, his duties with the company, and whether such information was taken from official company records. Similarly, the letter from G & S Electric, which independently raises questions regarding whether George Aragon was the actual affiant, fails to provide details regarding his duties with the company as well as

whether the information provided was taken from official corporate records. Furthermore, it is not on company letterhead. The minimal and conflicting information contained in these letters raises doubts with regard to the credibility of the application as a whole.

As stated above, the inference to be drawn from the documentation provided shall depend on the extent of the documentation. Although several affidavits of acquaintances have been submitted, they omit critical information and are not probative.

While there is no specific regulation which governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements which affidavits from organizations are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information which an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to. *See* 8 C.F.R. § 245a.2(d)(3)(v).

While these standards are not to be rigidly applied, an application which is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on affidavits which are considerably lacking in such basic and necessary information.

The affidavits submitted in support of this application fall far short of meeting the above criteria. The affidavits of [REDACTED] and [REDACTED] merely claim that they have known the applicant since 1981 or 1982. They do not state the circumstances surrounding their acquaintance, the address(es) of the applicant during their acquaintance, or the origin of the information to which they attest. The brief and somewhat generic statements set forth in these affidavits fail to conform to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3).

Given the absence of contemporaneous documentation and the reliance on affidavits which do not meet basic standards of probative value, it is concluded that the applicant has failed to establish, by a preponderance of evidence, that he continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. Therefore, the applicant 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.