

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

L2

PUBLIC COPY

[Redacted]

FILE:

MSC 03 030 60611

Office: NEWARK

Date:

FEB 27 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:

[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 A. 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, Newark, 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's denial is not based on the facts of the case or on the law. Counsel contends that the director's decision was arbitrary and capricious, and did not fully take into consideration all the facts of this case.

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).

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing entry into the United States before January 1, 1982, and continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

In the Notice of Intent to Deny (NOID), dated August 14, 2003, the director stated that the applicant failed to establish his entry into the United States before January 1, 1982, and continuous unlawful presence during the requisite period. The director granted the applicant thirty (30) days to submit a rebuttal or additional evidence. In response to the NOID, the applicant submitted two affidavits from individuals in Mexico as proof of his continuous presence in the United States during the statutory period. In the Notice of Decision, dated March 1, 2004, the director stated that the evidence presented was insufficient to establish eligibility for adjustment under the LIFE Act.

In support of the applicant's claim, the record includes both affidavits and employment letters.

Affidavits

The record contains two affidavits sent via facsimile from affiants in Mexico: 1) a September 11, 2003, letter signed [REDACTED] and 2) a September 9, 2003, letter signed by [REDACTED], a church member of St. Mary's Zacatepec in Mexico, stated that the applicant traveled to the United States on March 1981 and returned to visit his parents in 1988. [REDACTED] a medical surgeon in Mexico, stated that the applicant traveled to the United States in 1981. [REDACTED] stated that the applicant's parents brought the applicant to him before the applicant's trip to the United States. [REDACTED] stated that he applicant did not return until 1988.

None of the above affiants possess first-hand knowledge of applicant's entry into the United States or continuous residence throughout the requisite period. None of the affiants provided any supporting documentation of their identity. The lack of details in the affiants' letters and verifiability of the affiants detracts from the credibility of the affiants.

The record contains an affidavit by [REDACTED] father of the applicant, dated July 9, 2003. [REDACTED] stated that the applicant left for the United States when he was nine years old with his cousin, [REDACTED]. The affiant stated that the applicant returned for a visit in April 1988 when the applicant was sixteen years old. Although not required, the affiant did not include any supporting documentation of the affiant's identity. In addition, the affidavit is not amenable to verification.

The record also contains three nearly identical affidavits by [REDACTED] and [REDACTED], the applicant's siblings. All of the affidavits are dated on July 16, 2003. All

of the affiants stated that applicant came to the United States in 1981, when he was only nine years old. All of the affiants provided proof of their identity. None of the affiants provided any supporting documentation to corroborate their claims. None of the affiants provided any information that was amenable to verification. The lack of detailed information and amenability to verification detracts from the credibility of the affiants.

Employment

The record contains a letter by [REDACTED] of M.R. Ranch, dated January 9, 1990. The affiant stated that the applicant was employed from March 1981 to March 1984. The affiant failed to 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 as required under the regulation at 8 C.F.R. § 245a.2(d)(3)(i).

The record contains a letter by [REDACTED] of Rovi Food Corp., dated December 10, 1989 that provides that the applicant worked for the company from March 1984 to January 1987. [REDACTED] failed to provide the applicant's address at the time 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 as required under the regulation at 8 C.F.R. § 245a.2(d)(3)(i).

The record contains a sworn affidavit by [REDACTED] dated October 19, 1989. The affiant stated that the applicant worked for the farm from February to June 1987. The affiant stated that the applicant's job was to grind feed, clean barn, care for livestock, help when lambs are born, some field work. The applicant received \$4.00 per hour and room and board. The affiant provided her address. The affiant 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 as required under the regulation at 8 C.F.R. § 245a.2(d)(3)(i).

The record includes a letter by [REDACTED] dated July 10, 2003. The affiant stated that the applicant worked part-time for Caliper Farms from June 1987 to December 1988, and full-time from January 1989 through February 1997. The affiant failed to provide the applicant's address at the time of employment, show periods of layoff, 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).

These employment affidavits provide minimal probative value. None of the above affiants provided any contemporaneous documentation to corroborate the applicant's claim. Although not required,

the affiants did not include any supporting documentation of their identities. In addition, the absence of information required under the regulations detracts from the credibility of the affiants.

The AAO finds that the applicant has not provided any credible, contemporaneous evidence of residence in the United States during the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The totality of the evidence raises questions regarding the credibility of the affiants. Also, the absence of sufficiently detailed, supporting 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 meet his burden of establishing 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.