

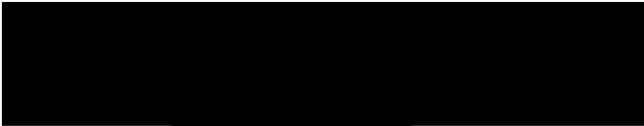
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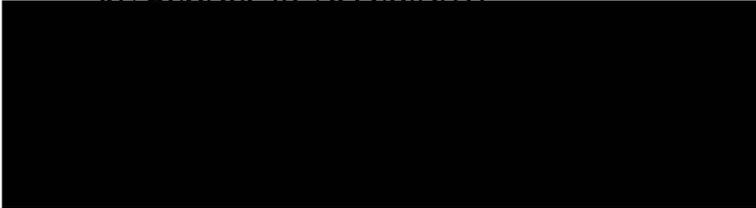
Applicant:



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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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, Dallas, 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 states that the applicant has submitted substantial documentary evidence to support a finding that he entered the United States prior to January 1, 1982 and resided there continually in an unlawful status through May 4, 1988, and claims that the director's decision was erroneous and that the evidentiary requests made were burdensome. Counsel resubmits affidavits and other documentation in support of this claim, and concludes that this evidence is sufficient to establish a "continued pattern of residency" for the applicant.

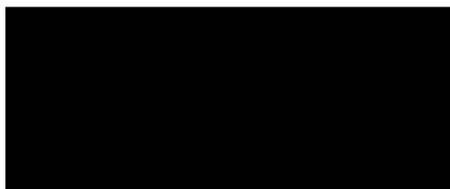
An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States and is otherwise eligible for adjustment of status 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).

Although Citizenship and Immigration Services (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).

On his affidavit for class membership, which he signed under penalty of perjury on July 16, 1990, the applicant claims that he entered the United States on October 15, 1980 without inspection. He claims that he departed the United States on one occasion, from August 15, 1987 to September 10, 1987 to visit family.

On Form I-687, Application for Status as a Temporary Resident, which he also signed under penalty of perjury,¹ the applicant claims that he was employed by [REDACTED], of Carrollton, Texas, from October 5, 1981 to September 20, 1986 as a finisher. He further claims that he was employed by [REDACTED] of Dallas, Texas as a welder from "8-6-8" to the present. Regarding his residences, the applicant claims that he lived at the following addresses in Texas

November 1981 to April 1983:
April 1983 to May 1985:
May 1985 to June 1987:
July 1987 to Present:



¹ It is noted that the date on the Form I-687 is July 16, 1979. Since this is an obvious mistake, the AAO will presume that it was executed on July 16, 1990, the same day the affidavit for class membership was executed.

In an attempt to establish continuous unlawful residence since October 1980, the applicant furnished the following evidence:

- (1) Undated statement from [REDACTED] of [REDACTED], claiming that the applicant worked for the company from October 15, 1981 to July 20, 1986. He claimed that applicant was paid \$150 per week.
- (2) Letter dated June 20, 2001 from [REDACTED] of the Human Resources Department of Lasting Products, claiming that the applicant was employed by the company as a migwelder from August 6, 1986 to March 8, 1991.
- (3) Letter of "Acknowledge" dated June 28, 1990 from [REDACTED] claiming that she can confirm the presence of the applicant in the United States from January 1981. She claims that she first met the applicant when he came to live at the [REDACTED] in Dallas. She further claims that she socializes with him frequently on the weekends.
- (4) Notarized statement dated July 11, 1990 by [REDACTED] the applicant's brother, claiming that the applicant has resided with him as follows:
[REDACTED] 11-81 to 4-83
[REDACTED] 4-83 to 5-85
[REDACTED] 5-85 to 6-87
[REDACTED] 7-87 to present
- (5) Second notarized statement by [REDACTED] dated July 14, 1990, claiming that the applicant resides with him at [REDACTED]. He further claims that the applicant has resided with him from 1981 to the present time.
- (6) Notarized statement dated July 17, 1990 by [REDACTED] claiming that he has known the applicant since March 1981. He claims that the applicant currently resides at [REDACTED] and that he visits the applicant there regularly.
- (7) Notarized Statement dated July 14, 1990 by [REDACTED] claiming that he has known the applicant since April 1981. He claims that he keeps in regular contact with the applicant and that he knows that he lives with his brother at [REDACTED].
- (8) Notarized statement dated July 14, 1990 by [REDACTED] who claims that he has known the applicant since April 1981. He claims that he keeps in regular contact with the applicant and that he knows that he lives with his brother at [REDACTED].
- (9) Notarized letter dated July 10, 2001 by [REDACTED] claiming that he has known the applicant since November 1981. He further claims that the applicant lives at [REDACTED].
- (10) AllstarInns rent receipts for the property located at [REDACTED] dated September 2, 1983, July 2, 1984. The director noted that the year on each invoice appeared to have been added after the fact.

- (11) Receipt dated July 18, 1981 for "Watch Repair" from an unknown source.
- (12) Receipt dated March 21, 1982 for a 19" Sony TV from an unknown vendor.
- (13) Invoice dated March 5, 1983 for the purchase of an oil filter, antifreeze, oil and labor. The invoice does not indicate the name of the vendor, but lists the applicant as the person the items were sold to, and [REDACTED] under the section marked "Ship To."
- (14) Certificate dated November 8, 1987 from Mountain View College, certifying that the applicant completed an English as a Second Language course.
- (15) Paystubs from Lasting Products for the pay periods ending December 27, 1996, January 10, 1987, and April 23, 1988.
- (16) Document entitled Contrato de Garantia dated November 27, 1987. Because the applicant failed to submit a certified translation of the document, the AAO cannot determine whether the evidence supports the applicant's claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.
- (17) Receipts from Presidents Health and Racquet Club, Inc. dated December 23, 1987, January 24, 1988 (2), February 22, 1988, March 23, 1988, April 23, 1988, and May 23, 1988.
- (18) Receipt dated June 23, 1988 from Dallas Health Club.
- (19) Document entitled "Individual Statement of Participation in the Lasting Products, Inc. Amended & Restated Profit Sharing Plan, indicating that the applicant's date of vesting begins on August 6, 1986.
- (20) Character Reference Statement dated July 12, 1990 by [REDACTED] claiming that he has known the applicant from March 1981 to the present. [REDACTED] appeared to be a neighbor of the applicant as he also lived on [REDACTED].
- (21) Contract dated December 23, 1987 between the applicant and Dallas Health Club.
- (22) Letter dated May 3, 1988 from [REDACTED] Personnel Director of Lasting Products, claiming that the applicant has been employed by the company since August 6, 1986.

On March 22, 2005, CIS issued a Notice of Intent to Deny the application. The district director noted that despite the applicant's claim that he continually resided in the United States since October 1980, the record did not contain credible evidence to support a finding that the applicant was continually present from 1982 through 1988. Specifically, the director noted that the two statements of his brother, [REDACTED] seemed to contradict each other. The director further noted that upon investigation, the applicant's claimed employer, [REDACTED] was not a registered corporation in Texas. The director afforded the applicant the opportunity to clarify these inconsistencies.

In a response dated April 4, 2005, counsel for the applicant provided a new affidavit from the applicant's brother, clarifying that the statements made in his July 11, 1990 statement were true. Counsel also addressed the director's claim that the applicant's employer from the early 1980's did not exist, and

claimed that the applicant was unaware of the name of the actual companies that he worked for during this period, and in good faith submitted the letter based on the assumption that he was in fact a contractor for them during the requisite period. The applicant also resubmitted copies of evidence previously submitted.

The director denied the application on September 17, 2005. The director noted that despite counsel's response and the additional evidence submitted, the applicant had not overcome the basis for the director's objections. On appeal, counsel for the applicant resubmits the previously-submitted documentation, and argues that the evidence in the record is sufficient to establish the applicant's eligibility by a preponderance of the evidence.

The issue on appeal is whether the applicant has demonstrated that he continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988, as required by 8 C.F.R. § 245a.11(b).

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 or 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.

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

The director's first objection was based on the applicant's failure to substantiate his claim that he was employed by [REDACTED] from October 5, 1981 to September 20, 1986. Noting that the record contains substantial documentation for the years 1987 and 1988, the legitimacy of his employment during this period as proof of residence is critical. Under penalty of perjury, the applicant stated on Form I-687 that he worked for this company during the stated period. The letter submitted by the alleged employer corroborates this claim. However, upon independent attempts to verify the existence of this company and the information contained in the letter, the director noted that the employer was not incorporated in the State of Texas as claimed.

In response to the director's NOID, the applicant, through counsel, claimed that he worked for a number of companies during this period at various construction sites, and "assumed" that [REDACTED] had been his employer during this time after a friend put him in contact with the company. The applicant claimed to have minimal

language skills at the time and thus was unable to verify the accuracy of the letter, thereby unintentionally providing misleading information to the Service. In the denial, the director focused on the applicant's admission that this document was indeed fraudulent, and noted that the credibility of the remaining evidence was thus subject to further scrutiny. On appeal, counsel again claims that the applicant was unaware of the fraudulent nature of this document, and urges reconsideration based on the applicant's exercise of due diligence to obtain employment verification for the period in question.

On appeal, the AAO concurs with the director's conclusion. The fact that the applicant claimed under penalty of perjury to work for this company for approximately five years, yet subsequently admitted that he really did not know anything about this company or the origin of the letter upon which he bases his application raises serious questions regarding the authenticity of the application in its entirety. Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). In this matter, the applicant acknowledges that he never in fact asked what company or companies he was working for, and therefore has no legitimate employment verification in the record to support his claims of residency from before January 1, 1982 through May 4, 1988. While the record does contain two letters from Lasting Products which verify his employment from August 6, 1986 through the end of the requisite period, these letters do not establish the applicant's presence in the United States during the entire period in question.

Additionally, the applicant relies on several affidavits to establish his entry prior to January 1, 1982 through May 4, 1988. The AAO notes that the director raised questions regarding the two notarized statements of the applicant's brother, [REDACTED]. The director notes that the statement dated July 14, 1990 conflicts with his statement of July 11, 1990. Specifically, the July 14, 1990 statement provides that "[the applicant] resides at [REDACTED] [and] he lives there with me and I provide room and board for him. He has resided with me since April 1981 [until] the present time."

The director found that this statement suggested that the applicant had resided at the [REDACTED] address since 1981, and therefore contradicted the applicant's list of addresses on Form I-687 as well as the address list provided by [REDACTED] in the July 11, 1990 statement. In an attempt to overcome this discrepancy, the applicant submitted a third affidavit from [REDACTED] dated March 31, 2005, where it is clarified that the applicant allegedly resided with his brother at four different addresses since 1981. Upon review, it appears that the director incorrectly interpreted the July 14, 1990 affidavit to mean that the applicant had resided on [REDACTED] since 1981. The AAO finds that the content of the July 11, 1990 and the March 31, 2005 affidavits are consistent, and that the director erroneously concluded that a conflict existed in the July 14, 1990 affidavit. The director's comments with regard to this issue are hereby withdrawn.

Therefore, the record contains two affidavits from his brother, claiming that the applicant resided with him at these various addresses since April 1981. However, no independent evidence, such as rent receipts, utility bills, or letters addressed to the applicant is submitted to corroborate this claim. While several affidavits, such as those from [REDACTED], [REDACTED] and [REDACTED], attest to knowing the applicant since 1981, they provide no additional information to corroborate the applicant's presence during this period.

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).

All of the affidavits above provide only brief statements regarding the basis of their acquaintance with the applicant. Although some provide the applicant's current address, they omit the applicant's addresses during the relevant period and do not discuss the origin of the information to which they attest. While most attest to the applicant's continuous residence in the United States, they omit exact dates and fail to provide the manner in which they can attest to such statements. *For example, although most of the affiants claim they are in contact with the applicant and that he is an honest and hard-working person, they provide no additional information regarding the nature of their acquaintance or their frequency of contact during the relevant period.*

While the record contains sporadic receipts from the early 1980's, such as one for the purchase of a television and another for automotive services, there is insufficient evidence to establish his continuous residence during this period. Although a significant amount of documentation exists for the years 1987 and 1988, the fact remains that the record is devoid of evidence to show his continuous residence in the United States since before January 1, 1982 through 1986.

As stated above, the inference to be drawn from the documentation provided shall depend on the extent of the documentation. The minimal evidence furnished cannot be considered extensive, and in such cases a negative inference regarding the claim may be made as stated in 8 C.F.R. § 245a.12(e).

The above negative factors would not necessarily be fatal to the applicant's claim; however, the fraudulent nature of the employment letter intended to establish his residence from 1981 to 1986 raises serious doubts with regard to the overall veracity of the evidence contained in the record. If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

The applicant has not submitted any credible contemporaneous documentation to establish continuous unlawful status and physical presence in the United States from the time he claimed to have commenced residing in the U.S. through the end of the requisite period. In light of the fact that the applicant claims to have continuously resided in the United States, this inability to produce contemporaneous documentation of residence raises serious questions regarding the credibility of the claim.

Given the absence of contemporaneous documentation and the reliance on a fraudulent employment letter and 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.

It is noted that on March 22, 1991 the applicant was convicted of Driving While Intoxicated, in violation of 6701L/1 of the Vernon's Texas Civil Statutes, a Class B misdemeanor, for an incident which occurred on September 16, 1990. The record shows that the applicant was sentenced to 730 days in jail, and fined \$2,000. (Cause No. [REDACTED]). This misdemeanor 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).

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