



U.S. Citizenship
and Immigration
Services

L2

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

[REDACTED]

FILE:

MSC 01 313 60388

Office: SAN FRANCISCO

Date:

JUL 14 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: SELF-REPRESENTED

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, San Francisco, 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 failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

On appeal, the applicant requests reconsideration of the decision, noting that he was very young when he came to the United States and consequently had minimal evidence to support his application. The applicant submitted one new document in support of the appeal.

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.* 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.

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).

In the affidavit for class membership, which he signed under penalty of perjury on October 27, 1990, the applicant stated that he first arrived in the United States in January 1981, when he crossed the border without inspection. On his Form I-687, Application for Status as a Temporary Resident, which he also signed under penalty of perjury on October 23, 1990, the applicant claimed to live at [REDACTED] Ceres, California 95307 from January 1981 to May 1990. Regarding his employment, the applicant claimed on the same form that he was self-employed as "labour" and was paid on a cash basis from 1981 to the present.

The AAO concurs with the director's finding that the applicant submitted insufficient evidence to establish continuous residence and physical presence in the United States during the requisite period. In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant furnished the following evidence:

- (1) Affidavit dated August 22, 2002 from [REDACTED], claiming that she has known the applicant since 1981/1982. She further claims that the applicant worked for her as a casual worker doing yard work from 1981 until approximately 1986.
- (2) Affidavit dated August 22, 2002 from [REDACTED], claiming that he has known the applicant since 1986 as a friend and co-worker. Mr. [REDACTED] further claims that he met the applicant at Sikh Temple in Livingston while the applicant was residing in Merced. He concludes by stating that he and the applicant worked together at grape orchards in Lodi from 1986 until 1988, and claims they were paid in cash.
- (3) Affidavit dated October 27, 1990 by the applicant, claiming that he has had continuous residence in the United States since January 1981, and that since 1981, he was self-employed and received payments in cash.
- (4) Affidavit dated October 27, 1990 from [REDACTED], claiming that he has knowledge that the applicant resided at [REDACTED] Ceres, California 95307 from January 1981 to May 1990. Mr. [REDACTED] claims that he knows the applicant because he has visited him at this addresses.
- (5) Affidavit dated October 23, 1990 from [REDACTED] claiming that he has personal knowledge that the applicant went to Canada on October 10, 1987 and came back on November 19, 1987 after visiting his uncle. He further claims that he dropped the applicant off at the Canadian border.

In the Notice of Intent to Deny (NOID) dated May 23, 2002, the director stated that the applicant failed to submit evidence demonstrating his continuous unlawful residence in the United States during the requisite period. The director requested additional evidence to support his continuous presence in the United States during the requisite period as well as copies of the applicant's passport. Although copies of the applicant's passport were submitted, no additional evidence was received to support his claim of continuous residence in the United States. Consequently, the director denied the instant applicant on December 23, 2003.

On appeal, the applicant submits a Form W-2, Wage and Tax Statement for 1983, issued by [REDACTED] Farms. The Form W-2 indicates that the applicant earned \$61.60. It is noted that the applicant's address is listed as [REDACTED], Isleton, California 95641.

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. The applicant submitted affidavits as evidence to support his Form I-485 application. Here, the applicant has failed to meet this burden.

The applicant submitted five affidavits in support of his application. Each affidavit provided minimal information. The affidavit dated August 22, 2002 from [REDACTED], which claims that she has known the applicant since 1981/1982 and that the applicant worked for her as a casual worker doing yard work from 1981 until approximately 1986, provides insufficient information. She provides no discussion regarding the applicant's payment, nor does she provide any corroborative documentation evidencing wages paid to the applicant. The affidavit dated August 22, 2002 from [REDACTED], who claims that he has known the applicant since 1986 as a friend and co-worker, likewise provides minimal information. Although [REDACTED] states that he and the applicant worked together at "grape orchards" in Lodi from 1986 until 1988, and claims they were paid in cash, he provides no additional details regarding the names of the orchards, the names of their actual employer, or specific dates. Finally, he claims that he met the applicant at Sikh Temple in Livingston while the applicant was residing in Merced. The record, however, reflects that the applicant never lived in Merced during this period, but that he allegedly resided in Ceres until May 1990.

The affidavit dated October 27, 1990 from [REDACTED], who claims that he has knowledge that the applicant resided at [REDACTED] Ceres, California 95307 from January 1981 to May 1990 because he visited him at this addresses is not persuasive. Mr. [REDACTED] provides no information regarding how he met the applicant, the frequency of their contact, or the nature of the information to which he attests. Moreover, the affidavit dated October 23, 1990 from [REDACTED], who claims that he has personal knowledge that the applicant went to Canada on October 10, 1987 and came back on November 19, 1987 after visiting his uncle because he dropped the applicant off at the Canadian border, is insufficient to support a finding that the applicant maintained a continuous residence in the United States throughout the requisite period.

Finally, the applicant's affidavit dated October 27, 1990, in which he claims that he has had continuous residence in the United States since January 1981, and was self-employed since that time and received payments in cash, in insufficient and contradictory to [REDACTED]'s claims that they worked for grape orchards from 1986 to 1988.

Although the applicant has submitted numerous affidavits in support of his application, the applicant has not provided sufficient documentation 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. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period. None of the affiants indicated how they dated their acquaintance with the applicant or how frequently they saw the applicant. In addition, none of the affiants aside from [REDACTED] stated how they met the applicant. The absence of sufficiently detailed 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.12(e), 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 during the requisite period.

On appeal, the applicant submits a Form W-2 from 1983 which indicates that he earned \$61.60 from [REDACTED]

There are two problems with this document. First, it is issued to the applicant at an address in Isleton, California, although the applicant claims on his Form I-687 that he resided at [REDACTED] in Ceres in 1983. Additionally, it contradicts the claim that he was self-employed during the entire requisite period. 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).

Finally, the AAO notes that on September 30, 1992, the applicant provided a sworn statement to a service officer in which he claimed that he entered the United States from Hong Kong with a visa on October 23, 1990. He further claimed that he was married in Hong Kong on November 18, 1984, and worked as a driver in Kowloon from 1982 to 1990. These statements, made under oath, directly contradict the claims of the applicant in the instant application. 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.

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