

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

L2

[REDACTED]

FILE:

MSC 02 243 66053

Office: DALLAS

Date:

JUL 22 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 P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The District Director, Dallas, Texas, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application, finding that the applicant failed to establish that he entered the United States prior to January 1, 1982, and resided continuously in the United States in an unlawful status from that date through May 4, 1988. The director found that the record consisted entirely of affidavits as to the applicant's presence during the required time period and that there was no evidence to show presence.

On appeal, counsel for the applicant asserts that the applicant submitted credible and verifiable evidence that he was continuously and physically present in the United States since before January 1982 through May 4, 1988. Counsel asserts that the applicant submitted check stubs from 1988, 1989, and 1990, a California driver's license issued in 1989, and several verifiable affidavits. Counsel requests that the affidavits be given great weight because they are verifiable and credible.

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).

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.

The record reflects that on May 31, 2002, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On March 5, 2003, the applicant appeared for an interview based on his application. On that day, the interviewing officer issued the applicant a Request for Evidence (RFE), requesting that the applicant submit additional documents establishing his presence in the United States before January 1, 1982, through May 4, 1988. In response, the applicant submitted copies of pay stubs from 1988, 1989, and 1990, and letters and affidavits from several individuals.

On May 13, 2006, the director sent the applicant a Notice of Intent to Deny (NOID) the application, finding that the applicant had not established that he entered the United States before January 1, 1982. The director stated that the applicant did not respond to the RFE and listed the evidence contained in the applicant’s file. The director found that the record consisted entirely of affidavits as to the applicant’s presence during the required time period and that there was no evidence to show presence. The director informed the applicant that he had 30 days from the receipt of the NOID to submit any information the applicant felt was relevant to his case. The applicant did not respond to the director’s request.

On December 12, 2006, the director denied the application, finding that the applicant failed to establish that he entered the United States prior to January 1, 1982, and resided continuously in the United States in an unlawful status from that date through May 4, 1988. The director found that the record consisted entirely of affidavits as to the applicant’s presence during the required time period and that there was no evidence to show presence. The director noted that the applicant was sent a NOID and then requested additional time to respond to the NOID. The director noted that the applicant was allowed an additional 45 days to supplement the record with relevant documentation but failed to do so.

On appeal, counsel for the applicant asserts that the applicant submitted credible and verifiable evidence that he was continuously and physically present in the United States since before January 1982 through May 4, 1988. Counsel asserts that the applicant submitted check stubs from 1988, 1989, and 1990, a California driver's license issued in 1989, and several verifiable affidavits. Counsel requests that the affidavits be given great weight because they are verifiable and credible. Counsel submits a copy of the letter submitted in response to the NOID, which included the phone numbers of five of the affiants who submitted affidavits on behalf of the applicant.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish his entry into the United States before January 1, 1982 and his continuous residence from January 1, 1982, through May 4, 1988.

The record of proceeding contains the following evidence relating to the requisite period:

Letters

A letter dated February 10, 2003, from [REDACTED] Ms. [REDACTED] states that she writes to confirm her U.S. citizenship and that her letter is meant to supplement the letter dated March 29, 2002, for recommendation of the applicant;

- A letter dated March 29, 2002, from [REDACTED] Ms. [REDACTED] states that she has known the applicant since 1982. She states that the applicant has been like a part of her family since he came to the country in 1982. She states that he has always proven to be a helpful person and committed to helping society. She states that the applicant is honest, hardworking, loyal, trustworthy, very eager, and law abiding;
- A letter dated May 7, 2002, from [REDACTED]. In this letter, Mr. [REDACTED] simply states that he has known the applicant since 1981 when they both lived in the San Fernando Valley, California. He states that the applicant is a hard working, honest, trustworthy individual;

A letter dated May 13, 2002, from [REDACTED] Mr. [REDACTED] states that he has known the applicant from California since 1981. He states that they met on a social basis and have had a strong friendship since then. As a result of knowing the applicant for a long period of time, he states that he and his family have been witness to the applicant's trustworthy and hardworking character;

- A letter dated May 14, 2002, from [REDACTED]. Ms. [REDACTED] states that she has known the applicant since 1981 when they resided in California. She

states that she was introduced to the applicant through relatives in 1981 at her previous address in Northridge, California. She states that since then they developed and maintained a close friendship. She states that he is an honest, hardworking individual who has already contributed greatly to American society; and,

A letter dated April 24, 2002, from [REDACTED]. Mr. [REDACTED] states that he has known the applicant since 1981 when the applicant was renting a room from his father's house. He states that the applicant was in active search of permanent employment during that time. He states that he told the applicant to apply for an opening where he worked at [REDACTED], div. L.R.H. Enterprises. He states that the applicant was hired in 1985 and that he worked under Mr. [REDACTED]'s supervision and training until about 1994. Mr. [REDACTED] states that he was head Foreman at that time.

These affidavits can be given little evidentiary weight as evidence of the applicant's residence and presence in the United States for the requisite period as they are not sufficiently detailed. These affidavits suggest that the applicant was in the United States for the requisite time period, but lack any details that would lend credibility to the statements. The affiants also fail to provide details regarding their claimed relationship with the applicant for over 25 years that would lend credibility to their statements. None of the affiants provide an exact date of when they met the applicant or specify how they can recall the date when they met the applicant. Thus, they can be given minimal weight as evidence of the applicant's residence at the noted address from 1981 through 1984. Regarding the applicant's claimed entry into the United States before January 1, 1982, there is no statement by anyone who claims to have personal knowledge of such entry.

Although the applicant has submitted numerous affidavits in support of his application, he has not provided any contemporaneous evidence of residence in the United States during the duration of the requisite period. The pay stubs and California driver's license are all dated after 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 affiants' presence in the United States during the requisite period.

The record of proceedings contains various other documents, including a letter dated February 13, 2003, from [REDACTED] a letter dated November 15, 1996, from [REDACTED] a letter dated February 5, 2003, from [REDACTED] a letter dated January 24, 2003, from [REDACTED] a letter dated January 24, 2003, from [REDACTED], and a letter dated January 27, 2003, from [REDACTED]. This evidence refers to employment and acquaintance with the applicant after the requisite time period and does not address the applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have last entered the United States in 1981, near San Isidro, California, and to have resided for the duration of the requisite period in California.

In summary, the applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), and no hospital or medical records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv). The applicant also has not provided documentation (including, for example, money order receipts, passport entries, children's birth certificates, bank book transactions, letters of correspondence, a Social Security card, or automobile, contract, and insurance documentation) according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (I) and (K). The documentation provided by the applicant consists solely of affidavits. These third-party affidavits lack specific details as to how the affiants knew the applicant – how often and under what circumstances they had contact with the applicant – during the requisite time period from prior to 1982 through 1988.

The regulation at 8 C.F.R. § 245a.12(e) provides that “[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods.” Preponderance of the evidence is defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black's Law Dictionary 1064 (5<sup>th</sup> ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

Given the insufficiency in the evidence, the AAO determines that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982, resided in this country in an unlawful status continuously since that time through May 4, 1988, and maintained continuous physical presence in the United States during the period from November 6, 1986 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Thus, he is ineligible for permanent resident status under section 1104 of the LIFE Act.

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.