

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



42

FILE:



Office: DALLAS

Date:

**JUL 23 2008**

MSC 03 043 61561

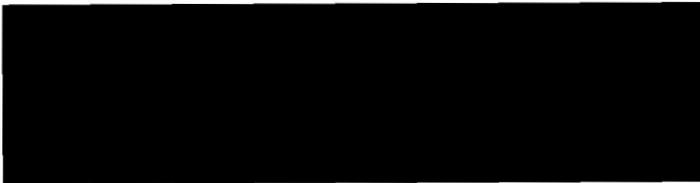
IN RE: Applicant:



APPLICATION:

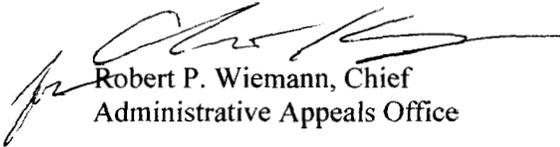
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

  
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 (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate that she entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

On appeal, counsel asserts that the applicant has submitted sufficient evidence to establish her continuous unlawful residence in the United States during the requisite period.

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)(v) states that letters from churches, unions or other organizations attesting to the applicant's residence must: identify the applicant by name; be signed by an official whose title is shown; show inclusive dates of membership; state the address where the applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization; establish how the author knows the applicant; and establish the origin of the information being attested to.

In the Notice of Intent to Deny (NOID), dated on September 15, 2005, the director stated that the applicant failed to submit credible and verifiable evidence to demonstrate her continuous unlawful residence in the United States during the requisite period. The director granted the applicant thirty (30) days to submit additional evidence. The record reflects that additional evidence was received. In the Notice of Decision (NOD), dated on July 12, 2006, the director denied the instant applicant based on the reasons stated in the NOID.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she entered the United States before January 1, 1982, and continuously resided in an unlawful status in the United States during the requisite period. Here, the applicant has failed to meet this burden.

In support of the applicant's claim of continuous unlawful residence, the record contains several affidavits/declarations and letters of employment. The applicant submitted several affidavits from her uncle, [REDACTED]. The record contains several discrepancies between Mr. [REDACTED]'s affidavits and the applicant's own testimony regarding the applicant's place of residence during the statutory period. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

On appeal, counsel submits a subsequent affidavit from [REDACTED]. In his affidavit, he stated that he previously provided the correct years, but incorrect addresses in his affidavits. He stated that he resided at [REDACTED] when the applicant first arrived in October 1981. He stated that his name was not on the lease because he lacked the required social security number. After two weeks, he moved to [REDACTED] from October 1981 through August 1985. He further stated that he resided at [REDACTED] from August 1985 to October 1985. He reaffirmed that the applicant moved out in October 1985. He also stated that he never thought he had to include the applicant's name on any of the leases. The AAO does not consider a subsequent affidavit from the same affiant, which now contains consistent information, to be independent objective evidence. Thus, the inconsistencies remain unresolved and, therefore, detract from the credibility of the applicant's claim.

The record also contains a declaration from the applicant's sister, [REDACTED] who stated that they entered the United States on October 10, 1981, and lived with their uncle. The applicant's sister failed to specifically state that the applicant continuously resided in the United States during the requisite period or to provide sufficient details regarding the applicant's place of residence in the United States during the requisite period. The absence of sufficient details from the applicant's own sister is noticeably lacking and provides limited probative value.

In the NOD, the director noted that a declaration from [REDACTED] was inconsistent. The declarant stated that she has known the applicant since 1981 and they met at St. James Catholic Church. The director stated that the applicant claimed to belong to another church, not St. James Catholic Church. On appeal, the applicant stated that she belonged to another church, but met the declarant at St. James Catholic Church. In addition, counsel submits an affidavit from [REDACTED], [REDACTED], who stated that the applicant had been invited to her church, St. James Catholic Church, for a baptism. This explanation is found to be reasonable and indicates that [REDACTED]'s statement is consistent with the applicant's claims. Therefore, this aspect of the director's decision is withdrawn. However, it is noted that the declarant failed to include the applicant's place of residence during the statutory period or other detailed information to corroborate the applicant's claim. The declaration provides only minimal probative value.

The record contains a declaration of [REDACTED], Virgin of Guadalupe Shrine, who stated that he has known the applicant since 1981 through 1995. This declaration failed to include the address where the applicant resided during membership period, establish how the declarant knows the applicant, and establish the origin of the information being attested to as required under the regulation at 8 C.F.R. § 245a.2(d)(3)(v). The lack of detailed information detracts from the credibility of the declarant.

The applicant also submitted three letters of employment on behalf of Harvey Hotel Addison. All of the declarations confirm that the applicant was employed with Harvey Hotel Addison from September 14, 1987, to September 13, 1989, as a room attendant. This evidence places the applicant in the United States after September 1987.

The applicant has submitted numerous affidavits/declarations in support of her application. While most of the affiants stated that they have known the applicant since 1981, few affiants provided sufficient details regarding how they met the applicant or the applicant's place of residence during the statutory period. Some of those affidavits were not amenable to verification because they provided no contact information for the affiant. In addition, inconsistencies between the applicant's own testimony and the affidavits of [REDACTED] have not been resolved by independent, objective evidence. 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 she has failed to establish continuous residence in an unlawful status in the United States during the requisite period.

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, she 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.