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FILE:

MSC 02 171 60919

Office: HOUSTON

Date:

**JUL 30 2008**

IN RE:

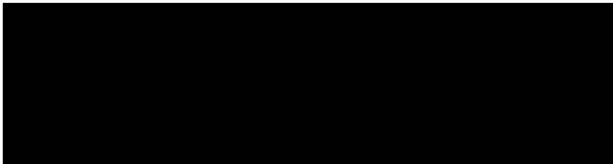
Applicant:



APPLICATION:

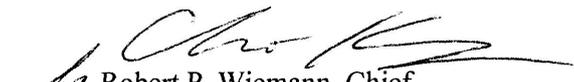
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), *amended by* LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. 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, Houston, 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 resided in the United States in a continuous, unlawful status from before January 1, 1982, through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act. In addition, the director determined that the applicant failed to submit sufficient proof that he used the aliases [REDACTED] during the requisite period.

On appeal, the applicant, through counsel, asserts that his testimony and the submitted evidence are sufficient to meet the preponderance of the evidence standard to establish his eligibility under the LIFE Act. The applicant submits his own affidavit in an attempt to reconcile discrepancies in the record. In his affidavit, the applicant maintains that he first entered the United States without inspection on or around 1979, and provides his explanations for the discrepancies in the record. The applicant also submits copies of previously submitted documentation relevant to the discrepancies.

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 must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date through May 4, 1988. *See* § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant 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 section 1104 of the LIFE Act. 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 (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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.13(f).

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet the burden of establishing, by a preponderance of the evidence, that the applicant's claim of continuous unlawful residence in the United States during the requisite period is probably true. Upon an examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has failed to meet this burden.

The applicant has provided the following evidence relating to the requisite period:

1. The record contains an affidavit, dated February 16, 2002, from [REDACTED] who certified that she has known the applicant since 1980 and she worked with him at [REDACTED] Factory in Kerens, Texas, from 1980 to 1983. She stated that he worked under the name of [REDACTED]. It is noted that the record contains the applicant's Form I-687, Application for Status as a Temporary Resident, dated November 10, 1991. In his Form I-687, the applicant stated that he worked for [REDACTED] & Bags from 1981 to 1984. The director noted this discrepancy.

On appeal, in his own affidavit, the applicant stated that "since it happened a long time ago" he did not remember the exact start date of employment. He admitted it is possible he started working in 1980 as indicated by [REDACTED]. The applicant has not provided any independent, objective evidence to reconcile the above discrepancy. However, the AAO finds this to be a minor inconsistency given the additional documentation in the record. The applicant also provided W-2 Wage and Tax Statements in the name of [REDACTED] dated 1981 and 1982. The employer is listed as [REDACTED]. Based on Ms.

- ██████████ affidavit, indicating that the applicant used the alias ██████████ and the W-2s, the
- \* AAO finds that the applicant has established by a preponderance of the evidence that he used the alias ██████████ and that he was employed by ██████████ in 1981 and 1982.
2. The record also contains an affidavit, dated February 16, 2002, from ██████████. Mr. ██████████ certified that he has known the applicant since 1979, the applicant worked at ██████████, Texas, from 1979 to 1984, and the applicant resided with him at ██████████, during this time. Again, while there are some minor discrepancies regarding the applicant's employment start date, as well as the street number of the applicant's residence, ██████████ affidavit corroborates the applicant's claim that he was employed and resided in the United States between 1981 and 1984.
  3. The record contains an affidavit, dated February 18, 2002, from ██████████ who certified that she has known the applicant since 1985 to the present. The affiant failed to provide sufficient details regarding her claimed friendship with the applicant or to provide any information that would indicate personal knowledge of the applicant's residence or the circumstances of his residence during specified years. Although she claims to have known the applicant since 1985, she also failed to note how or where she met him. Lacking relevant details, this affidavit has minimal probative value.
  4. The record contains an affidavit of employment, dated October 31, 1991, from ██████████ who stated that the applicant, aka ██████████ has worked for ██████████ Construction Co. since January 1988 as a cement worker. The affiant stated that the applicant resided at ██████████ during the employment period. The affiant stated that this information was obtained from his records. This employment is consistent with the applicant's Form I-687 and has some weight as evidence of the applicant's residence in the United States in 1988 and of the applicant's alias.
  5. The record contains a 1981 W-2 Wage and Tax Statement in the name of ██████████. The employer is listed as Oil City Iron Works Inc. This employment is consistent with the applicant's Form I-687, which lists the employer from 1980 to 1981, and further substantiates the applicant's residence in the United States in 1981 and the use of the above alias.
  6. The record contains nine original envelopes, which indicate correspondence between the applicant in the United States and contacts in Mexico. The envelopes are postmarked in March 1981, June 1981, May 1982, June 1982, May 1983, February 1985, September 1985, July 1987, and August 1987. It is noted that the applicant's addresses on the envelopes are consistent with his listed residences on his Form I-687. These envelopes provide some weight to the applicant's claim of residence in the United States during the specified time periods.
  7. The record also contains three fill-in-the blank declarations from ██████████. All three declarants stated that they have known the

applicant since 1981 and that the applicant resided at [REDACTED] Texas from 1981 until 1985. While the affidavits are partially consistent with the applicant's claimed residence in his Form I-687, the applicant did not indicate that he ever resided at [REDACTED]. This discrepancy detracts from the credibility of the affiants. In addition, the affiants failed to provide details regarding their claimed friendships with the applicant or to provide sufficient information that would indicate personal knowledge of the applicant's 1981 entry to the United States, his places of residence or the circumstances of his residence over the prior ten years of their claimed relationships. Lacking relevant details, these affidavits have minimal probative value.

For the reasons noted above, several of the documents submitted in support of the applicant's claim have been found to lack credibility or to have minimal probative value as evidence of the applicant's residence and presence in the United States for the requisite period. Although there is evidence of the applicant's residence in the United States from 1981 to 1984 and in 1988, and less probative evidence from 1985 and 1987, there is a most notable absence of documentation for the year 1986. While the submitted affidavits support the applicant's claim of residence during the statutory period, the affidavits in the record are bereft of sufficient detail regarding the applicant's residence in 1986 to be found credible or probative. While the AAO has overlooked minor inconsistencies in the record, the nature of the fill-in-the blank and non-probative affidavits detract from the credibility of the applicant's claim. Although some credible evidence of residence from 1981 through 1985 and 1987 through 1988 is included in the record, there is insufficient evidence of his residence in 1986.

The AAO finds that, upon an examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the applicant has not shown by a preponderance of the evidence that he resided in the United States for the duration of the requisite period.

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 lack of credible supporting documentation, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988, as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, 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.