

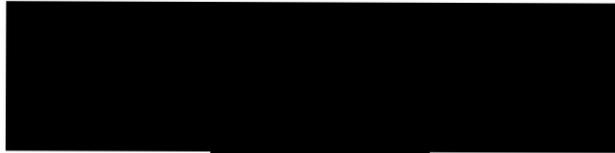
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U.S. Department of Homeland Security
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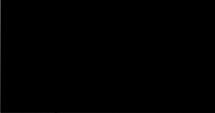
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FILE:



Office: HOUSTON

Date: JUN 03 2008

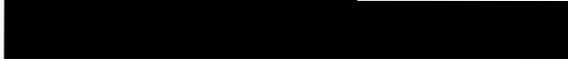
– consolidated herein]

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MSC 03 248 62782

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. 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, Houston, Texas, 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 from then through May 4, 1988.

On appeal, counsel submits a letter and additional documentation.

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 states 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 petitioner 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 petitioner 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 or petition.

The regulations at 8 C.F.R. § 245a.2(d)(3) provide an illustrative list of contemporaneous documents that an applicant may submit. While affidavits “may” be accepted (as “other relevant documentation”) [See 8 C.F.R. § 245a.2(d)(3)(vi)(L)] in support of the applicant’s claim, the regulations do not suggest that such evidence alone is necessarily sufficient to establish the applicant’s unlawful continuous residence during the requisite time period.

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.

In or about August 1991, the applicant applied for class membership in a legalization class-action lawsuit and submitted a Form I-687, Application for Status as a Temporary Resident. In support of that application the applicant submitted the following documentation regarding his residence in the United States from 1980 to 1989:

1. A notarized letter, dated August 31, 1991, from [REDACTED] stating that he had known the applicant as a friend since 1980, and visited him on a daily basis.
2. A notarized letter, dated August 31, 1991, from [REDACTED] stating that he had known the applicant as a friend since 1982, and had visited him on a daily basis.
3. A notarized letter, dated August 31, 1991, from [REDACTED], stating that he had known the applicant since 1979, and had visited him on a daily basis.
4. A notarized “affidavit of previous employment” and “affidavit of residence,” dated September 11, 1991, from [REDACTED], stating that the applicant worked in a variety of positions for different employers from March 1981 to December 1990, and that the applicant resided with him at [REDACTED], Houston, Texas, from March 1980 to August 1989. (See # 8, below regarding a discrepancy in the applicant’s address from 1980 to 1982, as claimed by the two affiants.)
5. A notarized letter, dated September 16, 1991, from [REDACTED], stating that the applicant resided with her at [REDACTED] Houston, Texas, from September 1989 to November 1989, and at [REDACTED] Houston, Texas, from December 1989 to September 1990.

While not required, the above-noted affidavits were not accompanied by proof of identification or any evidence that the affiants actually resided in the United States during the relevant period. The affiants are generally vague as to how they date their acquaintances with the applicant, how often and/or under what circumstances they had contact with the applicant during the relevant period, and lack details that would lend credibility to their claims. As such, the statements can be afforded only minimal weight as evidence of the applicant’s residence and presence in the United States.

The applicant claimed on his Form I-687, that he last entered the United States as a nonimmigrant visitor in March 1980. On September 10, 1991, the applicant signed a statement indicating that since March 1980 he had departed the United States by bus on three occasions - in September 1984, April 1987, and March 1988 - returning during each of those months without inspection by “[swimming] the river.” On September 30, 1991, the applicant also signed another statement indicating that he had hid a material fact in that, in fact, he had last entered the United States (with passport # [REDACTED]¹ as a non-immigrant visitor on July 11, 1990 – not March 1980 as he had initially claimed on his Form I-687.

In support of the Form I-687, the applicant submitted numerous Urgente Express international courier receipts - all but two of which were dated in 1990 and 1991. Two of the receipts, showing the applicant’s address as [REDACTED], Houston, Texas, appear to have altered issuance dates (“10/29/ 0,” and “7/7/81”). Furthermore, the record reveals that the applicant did not live at the address listed until 1990/1991.

The applicant filed the current Form I-485, Application to Register Permanent Resident or Adjust Status, under the LIFE Act on June 5, 2003. On the application, the applicant stated that he had last entered the United States on July 17, 1990 – as a nonimmigrant visitor for business purposes (B-1).

On February 2, 2005, the applicant was interviewed in connection with that application. At the time of interview, the applicant provided a copy of his passport (# [REDACTED] issued in Honduras on February 7, 1980, indicating that he had been issued nonimmigrant visas to enter the United States as a visitor for business purposes at the American Embassy in Tegucigalpa, Honduras on three occasions: February 14, 1984 – valid for one month; March 19, 1984 – valid for 6 months; and September 14, 1984 – valid for 3 months. The passport contained a variety of stamps showing the applicant’s entries and exits to from the United States, Mexico, Guatemala, and Honduras during the validity of his visas.

In an attempt to establish that he entered the United States before January 1, 1982, and resided in a continuous unlawful status from then through May 4, 1988, the applicant provided the following additional documentation in support of his Form I-765:

6. A letter, notarized on September 22, 2001, from [REDACTED], of Houston, Texas, stating that she had known the applicant since August 1979 while working at El Charro Restaurant in Houston, and that he offered her a job as housekeeper. Ms. [REDACTED] further states that since 1993, she has worked for the applicant as a baby-sitter for his child and that she “sees him consistently.
7. A letter, notarized on October 20, 2001, from [REDACTED] of Houston, Texas, stating that he met the applicant while working at Genoa Mining, and that they have

¹ There is no indication in the record that the applicant ever introduced this passport, or photocopies thereof, into the record of proceedings.

had continuous contact since 1984. There is no evidence contained in the record showing that the applicant ever worked at Genoa Mining.

8. A letter, notarized on October 20, 2001, from [REDACTED], of Houston, Texas, stating that that he had seen the applicant continuously since 1980, and that the applicant had lived at one of his apartments at [REDACTED] from 1982 until 1983 "when the apartment burnt." However, on his Form I-687, the applicant claimed that he resided at [REDACTED], Houston, from March 1980 to August 1989, and that did not reside at [REDACTED], Houston, until at least August 1991.

The above (Nos. 6, 7, and 8) also were not accompanied by proof of identification or any evidence that the affiants actually resided in the United States during the relevant period. The affiants are generally vague as to how they date their acquaintances with the applicant, how often and/or under what circumstances they had contact with the applicant during the relevant period, and lack details that would lend credibility to their claimed 21-year relationships with the applicant. As such, they also can be afforded only minimal weight as evidence of the applicant's residence and presence in the United States.

On May 9, 2006, the district director issued a Notice of Intent to Deny (NOID) the application because the applicant had failed to establish his continuous unlawful status in the United States from before January 1, 1982, through May 4, 1988. The director noted the applicant's numerous entries into the United States as a nonimmigrant throughout 1984, and the fact that he had three children born in Honduras – in 1980; October 12, 1982; and November 17, 1987. The applicant was granted **thirty days to respond to the notice. The record reflects that the applicant failed to respond.** In a Notice of Denial (NOD) dated July 10, 2006, the district director denied the application based on the reasons stated in the NOID.

On appeal, counsel asserts that the applicant's multiple entries during 1984 arose "from his going and visiting his family and taking automobiles to Honduras." Counsel states that the applicant would depart from a point of entry along the Texas/Mexico border and proceed to drive to Honduras. On return trips, he would fly back to the United States either through Miami, Florida; New Orleans, Louisiana; or Houston, Texas. Counsel states that no single absence was for more than 45 days, and the aggregate of all absences did not exceed 180 days. Counsel concludes that, "clearly, the applicant's testimony and supporting evidence is sufficient to meet the preponderance of evidence standard to establish eligibility under the Act."

In support of the appeal counsel submits a report from the Social Security Administration in Pasadena, Texas, stating that the applicant was issued two social security numbers – one in March 1979, and another in July 1989 that he continues to use. Counsel also submits a letter from the applicant claiming that the child born in 1980 was from a relationship he had in Honduras, that he and the child's mother were never married, and that it has never been proven that he was the child's biological father. The applicant further states that during the births of the other two children (in 1982 and 1987) occurred while he was living in the United States and his wife was living in

Honduras. He states that he “go back when he could to see his children, that it was not that often, and that at the time of the births he was in the United States.

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 before January 1, 1982, through May 4, 1988.

A review of the record reveals that 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). No objective documentation, such as bank book transactions, letters of correspondence, or automobile, contract, and insurance documentation, has been provided in accordance with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (I) and (K), showing his unlawful presence in the United States during the relevant time period. The documentation provided by the applicant consists primarily of third-party affidavits (“other relevant documentation”), as noted in Nos. 1 through 8, above.

The applicant has provided evidence that he obtained a Social Security card in 1979 and passport entries showing that he entered and re-entered the United States as a nonimmigrant on several occasions in 1984. The only money order receipts provided that cover the relevant time period appear to have been altered, and the applicant admits to conceiving children in Honduras in 1982 and 1987. However, there are discrepancies encountered in the testimony and evidence provided regarding the applicant’s numbers of times/manners of entry into the United States during the relevant time period that have not been adequately explained. The applicant indicated in a sworn statement in 1991 that he first entered the United States in March 1980, but evidence submitted on appeal indicates that he received a Social Security number in 1979; the applicant indicated that he reentered the United States after brief absences since 1980 by “[swimming] the river;” however, his passport # [REDACTED] indicates that he entered and reentered on multiple occasions throughout 1984 as a nonimmigrant visitor – as well as in 1990 as a nonimmigrant visitor; he has not provided a copy of his passport # [REDACTED]; and there are discrepancies regarding his residence during a critical time period from 1980 to 1982.

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). 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 visa petition. *Id.*

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 (5th ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

Pursuant to 8 C.F.R. § 245a.2(d)(5), 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 insufficiencies and discrepancies in the evidence provided, 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, and resided in this country in an unlawful status continuously since that time 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.

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