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FILE: [REDACTED]  
MSC 02 247 61027

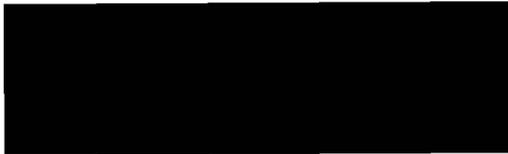
Office: HOUSTON

Date: JUN 03 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:



**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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 had continuously resided in the United States in an unlawful status from prior to January 1, 1982, through May 4, 1988.

On appeal, counsel for the applicant submits a letter.

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 as evidence in support of his or her application.

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.

While affidavits may be accepted as "other relevant documentation" 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. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The record reflects that the applicant, a 73-year-old native and citizen of Mexico, submitted a Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act), in or about December 1990. In support of that application, the applicant submitted numerous letters, dated in 1990, from acquaintances and alleged employers attesting to their knowledge and employment of the applicant. While not required, the letters provided are not accompanied by proof of identification or any evidence that the persons making the statements actually resided in the United States during the relevant period. They also lack details that would lend credibility to the claimed relationships with the applicant and are not supported by any corroborative evidence. As such, the statements can be afforded minimal weight as evidence of the applicant's residence and presence in the United States for the requisite period. Similarly, the letters of employment (from [REDACTED] and [REDACTED]) fail to meet the regulatory requirements, identified above, set forth under 8 C.F.R. § 245a.2(d)(3)(i). As such, they also carry little evidentiary weight.

The applicant filed the current Form I-485, Application to Register Permanent Resident or Adjust Status, on June 4, 2002. On October 25, 2004, the applicant was interviewed in connection with his application.

In a Notice of Intent to Deny (NOID), dated December 20, 2004, the district director determined that the applicant had failed to provide sufficient evidence that he had continuously resided in the United States in unlawful status from prior to January 1, 1982, through May 4, 1988. The district director noted that the applicant had stated under oath at his interview that he had continuously crossed the border to and from Mexico since 1979, and that he had been "grabbed" by immigration officials eight times in the past. The applicant further stated that the last time he was in Mexico was in 1989. The district director also noted that the applicant had contradictorily indicated on his Form I-697 that he had only departed the United States one time since 1979 – in 1984 to visit his wife in Mexico for one month. The applicant was provided 30 days in which to rebut and/or submit evidence supporting why his application should not be denied.

In response to the NOID, counsel for the applicant submitted a letter, dated January 19, 2005, stating that the applicant had been truthful about the dates surrounding his residence in the United States. Counsel asserts that the applicant first entered the United States when he was approximately 12 years old and was “grabbed” by immigration officials a total of 8 times between the ages of 12 and 17. Subsequently, in 1979, the applicant entered the United States “to stay.” Counsel further asserts that the applicant did depart the United States in 1984 to visit his wife, but suffers from “memory loss” and that it is reasonable to consider that he may not remember with perfect accuracy the exits he made each time he was “grabbed” by immigration officials.<sup>1</sup>

In a Notice of Denial (NOD), dated February 23, 2005, the district director denied the application on the grounds stated in the NOID.

On appeal, counsel for the applicant submits the following additional documentation:

- A letter, dated January 15, 2005, from [REDACTED] of Brenham, Texas, stating that he/she has known the applicant since an unspecified date in 1988, and that the applicant is a religious man who attends church regularly. The letter is not notarized. While not required, it also is not accompanied by proof of identification or any evidence that the affiant actually resided in Brenham, Texas, during the relevant period. It does not indicate the affiant’s relationship with the applicant, how he dates his acquaintance with the applicant, or how often and under what circumstances he had contact with the applicant during the requisite period; and otherwise lacks any details that would lend credibility to an alleged 17-year relationship with the applicant. It is unclear as to what basis the affiant claims to have direct and personal knowledge of the events and circumstances of the applicant’s residence in the United States. As such, the statement can be afforded minimal weight as evidence of the applicant’s residence and presence in the United States, particularly prior to 1988.
- A letter, dated January 17, 2005, from [REDACTED] of Brenham, Texas, on letterhead stationery from the First Baptist Church, Chappell Hill, Texas, stating that he has known the applicant for 12-15 years. Mr. [REDACTED] further states that his family had the applicant do some house-sitting for them, that the applicant had gone to their church in the early years of the acquaintance, and that for a number of years he had not seen the applicant to talk to him but that Mrs. [REDACTED] (another of the applicant’s references) says he has been living in the area. This letter suffers from the same deficiencies as the one above from [REDACTED]

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<sup>1</sup> It is noted that the record contains documentation establishing that the applicant suffered a traumatic head injury in Mexico when he was seven years old, and has had visual and auditory hallucinations at times that have not affected his ability to work or function well in society. See the letter contained in the record of proceedings, dated September 3, 2004, from Dr. [REDACTED] of the Brenham Clinic in Brenham, Texas.

- An affidavit, notarized on January 22, 2005, from ██████████ of Posen, Illinois. Mr. ██████████ states that he has known the applicant all his life because the applicant is his uncle, and that the applicant is a responsible, respectful, caring and hard-working person. Mr. ██████████ makes no mention of how often and under what circumstances he had contact with the applicant during the requisite time period.

The issue in this proceeding is whether the applicant has established that he continuously resided in the United States in unlawful status from prior to January 1, 1982, through May 4, 1988.

Although the applicant has submitted affidavits in support of his application, he has not provided any of the contemporaneous documents provided for in 8 C.F.R. § 245a.2(d)(3) as evidence of his residence in the United States during the requisite time period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality.

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 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 from prior to January 1, 1982, through December 31, 1987.

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 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). 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.