



U.S. Citizenship  
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[Redacted]

FILE: [Redacted]  
MSC 02 236 63800

Office: DALLAS

Date: MAR 12 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 application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Dallas, 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 through May 4, 1988.

On appeal, counsel asserts that the director erred in not giving more weight to affidavits presented by the applicant.

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.

In the Notice of Intent to Deny (NOID), dated November 15, 2005, the director stated that the applicant failed to submit evidence demonstrating his continuous unlawful residence in the United States during the requisite period. The director noted that the applicant submitted a letter from St. James Catholic Church, which states that the applicant was a member from February 11, 1981 through 1984. The church was contacted on August 1, 2005, however, it could not provide any written documentation regarding these dates. The director also noted that the record of proceedings contained Immigration Court documents from the Chicago District from 1982 and 1983, which indicates October 17, 1982 as the applicant's date of entry into the United States; and, his departure from the United States on February 16, 1983. However, on his original I-687, the applicant claimed to have entered the United States in February 1981. The director granted the applicant thirty (30) days to submit additional evidence.

The record reflects that the applicant's response to the NOID consisted of an affidavit from the applicant stating his travels in the United States, and a letter from counsel asserting that, regarding the letter from St. James Church, the applicant had meet the preponderance of evidence standard, although the church stated that they did not have written records of his membership during the requisite period. No additional evidence was received. In the Notice of Decision, dated January 24, 2006, the director denied the instant application 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 he continuously resided in the United States in an unlawful status during the requisite period. The applicant submitted letters of employment and affidavits as evidence to support his Form I-485 application. Here, the submitted evidence is not relevant, probative, and credible.

#### Employment Letters

The applicant submitted two letters of employment by [REDACTED], a Ceramic Tile Contractor, and [REDACTED], a Contractor. [REDACTED] states in his July 5, 1990 letter that the applicant had been employed in the position of Tile Helper from February 1981 to December 1985, with a salary of \$5.50 an hour. [REDACTED] states in his May 17, 2002 letter that the applicant worked with him in construction since 1982. Both [REDACTED] and [REDACTED] failed to provide

the applicant's address at the time of employment, show periods of layoff, 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 as required under 8 C.F.R. § 245a.2(d)(3)(i). [REDACTED] failed to specify the date or month in 1982 when the employment commenced.

Pursuant to 8 C.F.R. § 245a.2(d)(3)(i), letters from employers should be on employer letterhead stationery. None of the letters of employment are on original company letterhead stationery. In addition, none of the all the affiants provided the applicant's current address of residence, and they failed to provide the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the affiants also failed to 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.

### Affidavits

The applicant submitted sworn affidavits by [REDACTED], and [REDACTED]. All these affiants stated that they have known the applicant prior to 1981. However, they do not state whether the applicant has been a continuous resident of the United States since that time.

Although the applicant has submitted three affidavits in support of his application, the applicant has not provided any contemporaneous evidence of residence in the United States during the duration of 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 affiant's presence in the United States during the requisite period. None of the affiants indicated how they dated their acquaintance with the applicant, how they met the applicant or how frequently they saw the applicant. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim. 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 May 4, 1988.

As noted by the director, the record reflects that the applicant was apprehended on entry on October 17, 1982, was placed in deportation proceedings (under [REDACTED] which has not been consolidated), and on November 16, 1982, an Immigration Judge granted the applicant voluntary departure in lieu of Removal on/or before February 16, 1983, with an alternate Order of Deportation to Mexico, if the applicant failed to depart the United States as required. It appears that the applicant departed the United States on or about February 15, 1983.

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.