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U.S. Department of Homeland Security
20 Mass Ave. NW Rm. 3000
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U.S. Citizenship
and Immigration
Services

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PUBLIC COPY

[Redacted]

FILE:

[Redacted]

Office: DALLAS, TEXAS

Date: **MAR 21 2008**

consolidated herein]
MSC 03 247 62376

IN RE:

Applicant:

[Redacted]

PETITION: 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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits [or Records] 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 in Dallas, Texas. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that he entered the United States before January 1, 1982 and resided in the country continuously thereafter in an unlawful status through May 4, 1988.

On appeal, counsel submits a brief and assorted documents, most of which were already in the record.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. See section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

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. See 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 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.

The applicant, a native of Mexico, filed the current application for permanent resident status under the LIFE Act (Form I-485) on June 4, 2003. In a Notice of Intent to Deny (NOID), dated September 20, 2005, the director cited various deficiencies and contradictions in the documentation submitted as evidence of the applicant's residence in the United States during the 1980s, and concluded that the evidence of record did not support the applicant's claim to have entered the United States before January 1, 1982, and resided continuously in the United States in an unlawful status from that date through May 4, 1988. The applicant was granted thirty days to submit additional evidence.

Counsel responded with additional letter and affidavit evidence, including an affidavit from the applicant, addressing the evidentiary shortcomings cited in the NOID.

On November 22, 2005, the director denied the application on the ground that the evidence of the applicant's residence in the United States during the 1980s relied largely on letters from alleged employers, whose companies did not appear to be registered in the State of Texas. The director determined that the applicant had failed to establish his entry into the United States before January 1, 1982, and continuous unlawful residence in the United States through May 4, 1988.

On appeal counsel reiterates the applicant's claim to have entered the United States in December 1980 and continuously resided and worked in the United States in an unlawful status through May 4, 1988. Counsel lists nine affidavits and letters, eight previously submitted and one new, from individuals who claim to have known and/or employed the applicant in the United States during the 1980s. Only the first three individuals, however, claim to have known the applicant before January 1, 1982.

One is [REDACTED], whose affidavit was prepared on July 26, 1990. [REDACTED] stated that he met the applicant in 1976 and had been in continual contact with him since December 1980 as they both lived in Fort Worth, Texas. Except to indicate that they frequently visited one another, [REDACTED] provided almost no details about the nature of his relationship to the applicant during the 1980s. Nor did he furnish any evidence of his own presence in Fort Worth during that decade, except for his address and phone number as of 1990, and he did not provide the applicant's address(es) in Fort Worth during the 1980s.

Another affidavit was prepared by [REDACTED], of Fort Worth, dated October 1, 2005. He claims to have met the applicant in 1981, become friends with him, and recommended him to his [REDACTED], who hired the applicant during the period of March to August 1981. [REDACTED] states that the applicant followed him to another employer, [REDACTED] and worked there from August 1981 to March 1982. After indicating that the applicant lived at [REDACTED] in Fort Worth, until 1985, [REDACTED] provides no further information about the applicant and their relationship except to state that “[w]e have continued to stay in touch . . . and we are good friends.” Like [REDACTED], [REDACTED] has furnished no evidence of his own presence in Fort Worth during the 1980s. Moreover, [REDACTED] has not explained the basis of memory, at the time he prepared his affidavit nearly a quarter century later, that he worked with the applicant at [REDACTED] and [REDACTED] in the exact time period of March 1981 to March 1982.

The third affidavit – the one new piece of evidence submitted on appeal – is a photocopied document on the letterhead of [REDACTED] in Fort Worth, dated December 6, 2005, and signed by [REDACTED]. According to [REDACTED] the applicant was employed by his company from March to August 1981 as a seasonal employee. The letter does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i), however, because it was not prepared in sworn affidavit form, does not identify the applicant’s address during his time of employment, does not describe his duties in detail, does not indicate whether the information was taken from company records, and does not indicate whether such records are accessible for review. It is also curious that the letter was not submitted in the original, but rather as a photocopy with several other overlapping items photocopied on the letter. These include an insert over the letterhead reading “Established 1927” which conflicts with the year appearing on a business card photocopied near the bottom of the letter reading “[REDACTED] Family Operated Since 1925.”

It is also noteworthy that the applicant did not list [REDACTED] or [REDACTED] as previous employers on either of the applications for temporary resident status (Form I-687s) he prepared on July 30, 1990, or on January 23, 1995 (in conjunction with his Form for Determination of Class Membership in CSS v. Meese or LULAC), despite the specific instruction on that form to list all employment in the United States “since first entry.”

Based on the foregoing analysis, the AAO concludes that the three documents discussed above fail to establish that the applicant was residing in the United States in an unlawful status before January 1, 1982, as required for the applicant to be eligible for LIFE legalization. None of the other letters and affidavits in the record are from individuals who claim to have known the applicant before January 1, 1982, and there is no contemporaneous documentation whatsoever from the years 1981-1988 that demonstrates the applicant’s residence or physical presence in the United States during that time.

Finally, the applicant himself gave contradictory information about his residential addresses in the United States during the 1980s on the Form I-687s he filed in 1990 and 1995. On the 1990 form the applicant listed his addresses since first entry into the United States as: (1) [REDACTED]

in Fort Worth – December 1980 to September 1989; and (2) in Fort Worth – September 1989 to the present (July 1990). On the 1995 form, however, the applicant gave a different and expanded list of addresses over that same time frame, including: (1) in Fort Worth – December 1980 to 1983; (2) in Fort Worth – 1983 to 1986; (3) in Fort Worth – 1988 to November 1989; and (4) in Palmetto, Florida – November 1989 to June 1990. The applicant has provided no explanation for this conflicting information on identical forms four and a half years apart.

Doubt cast on any aspect of the applicant's evidence reflects on the reliability of the petitioner's remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92, (BIA 1988).

In view of the numerous evidentiary inconsistencies which have not been adequately reconciled by the applicant, and the lack of probative contemporary documentation from the 1980s demonstrating the applicant's residence in the United States during that time period, the AAO determines that the applicant has failed to establish that he resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A). Accordingly, the applicant is not eligible for legal permanent resident status under section 1104 of the LIFE Act. The appeal will therefore be dismissed.

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