



U.S. Citizenship
and Immigration
Services

PUBLIC COPY
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

L2

[REDACTED]

FILE: [REDACTED] Office: DALLAS
MSC 03 245 60881

Date: **MAY 14 2008**

IN RE: Applicant: [REDACTED]

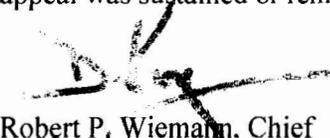
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), *amended by* LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits 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, Dallas, 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 finding that the applicant failed to establish his presence in the United States during the requisite period. Counsel contends that the applicant submitted credible and verifiable evidence to meet his burden of proof.

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 on May 17, 2004, the director stated that the applicant failed to submit evidence demonstrating his continuous unlawful residence in the United States during the requisite period. Specifically, the director noted that the applicant submitted several affidavits, insurance policy, and employment letters which were not verifiable as evidence of his presence during the statutory period. The director granted the applicant thirty (30) days to submit additional evidence. The record reflects that the applicant, through counsel, submitted additional evidence. In the Notice of Decision, dated July 25, 2006, the director denied the instant applicant 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 entered the United States before January 1, 1982, and continuously resided in an unlawful status in the United States during the requisite period. Here, the applicant has failed to meet this burden.

In support of his claim, the applicant submitted the following relevant evidence:

1. An April 30, 2004, affidavit by [REDACTED] who stated that he has knowledge that the applicant resided in Texas since November 1981. The affiant stated that when the applicant first entered the United States, he resided at [REDACTED] in Kaufman, Texas. The affiant provided his place of residence and telephone number. It is noted that the record contains the applicant's Form I-687, Application for Temporary Resident Status pursuant to Section 245A of the Immigration and Nationality Act, dated on July 28, 1990. In his Form I-687, the applicant stated that he lived at [REDACTED] in Dallas, Texas from July 1981 to present. The applicant's Form I-687 contradicts the affiant's statement. This discrepancy brings into question the credibility of the affiant.
2. A June 1, 1990, declaration from [REDACTED] president of Service King Paint and Body, Inc., who stated that the applicant began working for him in April 1988 on a part-time basis. The declarant provided his business address and telephone number. The declarant failed to provide the applicant's address at the time of employment, 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 as required under the regulation at 8 C.F.R. § 245a.2(d)(3)(i). The lack of details deter from the credibility of the declarant.

3. A March 7, 2004, affidavit from [REDACTED] who stated that he has known the applicant for 40 years. The affiant stated that when the applicant first entered the United States he resided on [REDACTED] Kaufman, Texas. The affiant also stated that the applicant was employed by Table Mft in Houston. The affiant provided his place of residence and telephone number. The affiant failed to provide exact dates of the applicant's residence in the United States. In addition, the affiant's statement conflicts with the applicant's statement in his Form I-687, which indicated that he lived at [REDACTED] in Dallas, Texas from July 1981 to present. This discrepancy brings into question the credibility of the affiant.
4. A copy of American National Insurance Company documents in the applicant's name from 1986 and 1987. This evidence tends to demonstrate that the applicant resided in the United States in 1986 and 1987.
5. A June 20, 1990, declaration from [REDACTED] who stated that he has known the applicant since 1984. The declarant stated that he wrote a family life insurance policy for the applicant. The declarant failed to provide his place of residence or telephone number and is not verifiable. The declarant also failed to indicate the applicant's place of residence during 1984. The lack of details in the declaration detracts from the credibility of the declarant.
6. A July 17, 1990, affidavit from [REDACTED] who stated that he has personally known the applicant since July 1981 in Dallas, Texas. The affiant provided his place of residence. Although not required, the affidavit failed to include any supporting documentation of the affiant's presence in the United States during the requisite period. The affiant also failed to indicate how he dated his acquaintance with the applicant, how he met the applicant or how frequently he saw the applicant. The affidavit provides minimal probative value.
7. A June 11, 1989, affidavit with an illegible signature. The affidavit indicates that the applicant was employed by Eagle Products Inc. from July 12, 1981, through August 1985. The affidavit states that the company ceased operations on November 12, 1987, and is no longer in business. The affiant failed to provide any contact information and is not verifiable. In addition, the affiant failed to provide the applicant's address at the time of employment, 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 as required under the regulation at 8 C.F.R. § 245a.2(d)(3)(i). The affidavit, which lacks sufficient details, deters from the credibility of the affiant.

8. A June 18, 1990, affidavit by [REDACTED], who stated that the applicant has been present in the United States since July 1, 1981. The affiant stated that she has visited the applicant on a personal basis since that time. The affiant provided her place of residence and telephone number. The affiant failed to indicate the applicant's place of residence during the requisite period. Although not required, the affidavit failed to include any supporting documentation of the affiant's presence in the United States during the requisite period. The affiant failed to indicate how she dated her acquaintance with the applicant, how she met the applicant or how frequently she saw the applicant. The affidavit provides limited probative value.
9. A June 28, 1990, affidavit from [REDACTED], proprietor of [REDACTED] Paint & Body Shop, who stated that the applicant worked at the shop from July 1987 through March 1988 as a contract labor. The affidavit is on company letterhead and contains the business address and telephone number. The affiant failed to provide the applicant's address at the time of employment, 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 as required under the regulation at 8 C.F.R. § 245a.2(d)(3)(i). The affidavit, which lacks sufficient details, deters from the credibility of the affiant.
10. A July 18, 1990, affidavit from [REDACTED] who stated that the applicant has resided continuously in the United States since July 1981 through the present (1990). The affiant provided his place of residence and the applicant's current place of residence. The affiant failed to indicate the applicant's place of residence during the requisite period. Although not required, the affidavit failed to include any supporting documentation of the affiant's presence in the United States during the requisite period. The affiant failed to indicate how he dated his acquaintance with the applicant, how he met the applicant or how frequently he saw the applicant. The lack of details detracts from the credibility of the affiant.
11. A July 18, 1990, affidavit from [REDACTED] who stated that the applicant has resided continuously in the United States since July 1981 through the present (1990). The affiant provided his place of residence and the applicant's current place of residence. The affiant failed to indicate the applicant's place of residence during the requisite period. Although not required, the affidavit failed to include any supporting documentation of the affiant's presence in the United States during the requisite period. The affiant failed to indicate how he dated his acquaintance with the applicant, how he met the applicant or how frequently he saw the applicant. The lack of details detracts from the credibility of the affiant.

12. School and immunization records for [REDACTED] which indicate that he is the applicant's son. The records are dated in 1986 and 1987. This evidence tends to demonstrate that the applicant resided in the United States in 1986 and 1987.
13. A May 25, 2005, affidavit from [REDACTED], who stated that he has known the applicant since March 1984. The affiant stated that he met the applicant at his brother's party and remained close friends. The affiant provided his place of address and telephone number. The affiant failed to indicate the applicant's place of residence during the requisite period. Although not required, the affidavit failed to include any supporting documentation of the affiant's presence in the United States during the requisite period. The affidavit provides minimal probative value.
14. A June 29, 1990, affidavit from [REDACTED] owner of [REDACTED] Concrete Contractor, who stated that the applicant worked for the company from October 23, 1985 through May 30, 1987, as a laborer. The affiant provided his business address. The affiant failed to provide the applicant's address at the time of employment, 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 as required under the regulation at 8 C.F.R. § 245a.2(d)(3)(i). The affidavit, which lacks sufficient details, deters from the credibility of the affiant.
15. A July 18 (no year), affidavit by [REDACTED] who stated that the applicant resided in the United States from 1981 through 1990. The affiant provided the applicant's places of residence. The affiant also provided her own place of residence. Although not required, the affidavit failed to include any supporting documentation of the affiant's presence in the United States during the requisite period. The affiant failed to indicate how she dated her acquaintance with the applicant, how she met the applicant or how frequently she saw the applicant. The affidavit provides limited probative value.

The record also contains the applicant's Form for Determination of Class Membership in *CSS v. Meese* or *LULAC*. The applicant stated that he first entered the United States in July 1981. However, to meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). Although the applicant has submitted numerous affidavits in support of his claim, the applicant has not provided sufficient probative evidence of entry into the United States in July 1981. None of the affidavits provide any first-hand knowledge of the applicant's entry into the United States. None of the affidavits corroborate the applicant's claim of entry into the United States through the border at Laredo.

While the applicant's insurance policy documents demonstrates the applicant's presence in the United States in 1986 and 1987, the applicant has not provided sufficient probative evidence of residence in the United States from before January 1, 1982, through 1985. As stated previously, the

evidence must be evaluated not by the quantity of evidence alone but by its quality. The record contains discrepancies between the applicant's statements and those of his affiants, [REDACTED] and [REDACTED]. The record contains four affidavits of employment which lack sufficient details and fail to comply with the regulations. The affidavit of employment from Eagle Products Inc. is not verifiable and the signature is illegible. The remaining affidavits lack sufficient details which detract from the credibility of the affiants. 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.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 applicant's reliance upon documents with discrepancies and limited probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States during the requisite period.

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.

Beyond the decision of the director, the record reflects that on December 13, 1998, the applicant was charged with *drinking while intoxicated*, in violation of section 49.04 of the Texas Penal Code, a class A misdemeanor. The applicant was convicted on June 8, 1999 and sentenced to imprisonment of 120 days and 2 years probation. This single misdemeanor conviction does not render him ineligible under pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a).

In addition, the record contains a Record of Deportable/Inadmissible Alien (Case [REDACTED] in the applicant's name, dated on September 30, 1999. Removal proceedings were initiated on August 30, 1999, in Dallas, Texas. The applicant was granted voluntary departure on or before March 21, 2000.

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