

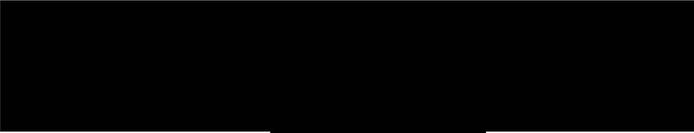
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**U.S. Citizenship
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FILE: [REDACTED] Office: LOS ANGELES Date: **MAY 23 2008**
MSC 02 241 62945

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. 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, Los Angeles, and is now before the Administrative Appeals Office 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 for the applicant submits a brief.

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.

In an attempt to establish his continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided the following evidence throughout the application process:

1. An affidavit, dated May 31, 2005, from [REDACTED] stating that he met the applicant at a bus stop in March 1982, and that the applicant “told him” that he (the applicant) had arrived in the United States on December 29, 1981.
2. An affidavit, dated November 21, 2001, from [REDACTED], stating that he knows the applicant has resided in the United States since December 1981. While not required, the affidavit is not accompanied by proof of the identification of the affiant. The affidavit also lack details regarding the basis of the affiant’ direct and personal knowledge of the events and circumstances of the applicant’s residence in the United States.
3. An affidavit from [REDACTED] stating that “the first time [he] met [the applicant] was in [sic] January 1, 1982....” Mr. [REDACTED] also (contradictorily) states that he is “able to recall that during the first meeting with [the applicant] in [sic] December 31, 1981....” The date of the affidavit is not clear. An affidavit from [REDACTED], dated November 28, 2001, states that he has known the applicant “...since the first of January 1982.”
4. An affidavit, dated April 5, 1990, from [REDACTED] stating that she has known the applicant since “the spring of 1982.” An affidavit from [REDACTED] also dated April 5, 1990, states that she took the applicant to the Los Angeles airport in July 1987 “...so that he could get on a flight to Portugal....”
5. An affidavit, dated April 6, 1990, from [REDACTED] stating that he has known the applicant “since his arrival in this country in 1982.”

In a Notice of Intent to Deny (NOID), dated December 20, 2005, the district director determined that the applicant had failed to submit sufficient evidence demonstrating his continuous unlawful residence in the United States from prior to January 1, 1982, through May 4, 1988. In a Notice of Decision (NOD), dated April 1, 2006, the district director denied the application based on the reasons stated in the NOID.

On appeal, counsel contends that the applicant has demonstrated that it is more probable than not that he resided in the United States for the requisite period and, as such, has met his burden of proof. Counsel further asserts that Citizenship and Immigration Services (CIS) should have taken reasonable steps to contact the individuals who provided declarations in order to corroborate the applicant’s claims.

The issue in the proceeding is whether the applicant has submitted sufficient evidence 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.

Although the applicant has submitted affidavits in support of his application, he has provided no contemporaneous evidence of residence in the United States during any of the requisite time period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality.

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).

The absence of any corroborative documentation to support the applicant’s claim of continuous residence during the requisite period 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 solely upon third-party affidavits – one of which is contradictory (No. 3, above); one which lacks details (No. 2); and two which merely attest to the applicant’s presence in the United States since the spring of 1982 (Nos. 1 and 4), or since an unspecified date in 1982 (Nos. 5) - 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.

It is noted that the record reflects the applicant was convicted of the following offenses in the Superior Court of California, County of Los Angeles: (1) a violation of section 23103 of the California Vehicle Code, a misdemeanor, on or about March 15, 2001; and, (2) a violation of section 23152(A) of the California Vehicle Code, a misdemeanor, on or about November 23, 2004.

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