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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:

MSC 01 321 60224

Office: DALLAS

Date:

**MAY 30 2008**

IN RE:

Applicant:



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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The District Director, Dallas, Texas, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application, finding that the applicant failed to establish eligibility to adjust his status to that of a lawful permanent resident under the LIFE Act because he did not provide verifiable evidence of his unlawful presence starting at the age of 12 in the United States. The director also found that it was not probable that the applicant maintained residence during the required period.

On appeal, counsel for the applicant asserts that the applicant submitted credible and verifiable evidence that he was continuously and physically present in the United States since before January 1982 through May 4, 1988. Counsel asserts that the affidavits and employment letters establish this by a preponderance of the evidence.

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.

The record reflects that on August 17, 2001, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On January 10, 2005, the applicant appeared for an interview based on his application. The interviewing officer issued the applicant a Request for Evidence (RFE), requesting that the applicant submit additional documents establishing his presence in the United States before January 1, 1982, through May 4, 1988. In response, the applicant submitted

On April 29, 2006, the director sent the applicant a Notice of Intent to Deny (NOID) the application, finding that the applicant failed to establish eligibility to adjust his status to that of a lawful permanent resident under the LIFE Act because he did not provide verifiable evidence of his unlawful presence starting at the age of 12 in the United States. The director also found that it was not probable that the applicant maintained residence during the required period. The director noted that much of the evidence provided by the applicant contradicted other evidence in the record regarding presence during the required period. The director informed the applicant that he had 30 days from the receipt of the NOID to submit any information the applicant felt was relevant to his case.

On July 1, 2006, the director denied the application, finding that the applicant failed to overcome the grounds for denial as stated in the NOID.

On appeal, counsel for the applicant asserts that the applicant submitted credible and verifiable evidence that he was continuously and physically present in the United States since before January 1982 through May 4, 1988. Counsel asserts that the affidavits and employment letters establish this by a preponderance of the evidence.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish his entry into the United States before January 1, 1982; his continuous residence from

January 1, 1982, through May 4, 1988; and, his continuous physical presence in the United States during the requisite period.

The record of proceeding contains the following evidence relating to the requisite period:

Letters and Affidavits

- A letter notarized on March 8, 2001, from [REDACTED]. Ms. [REDACTED] lists her own current address. She states that she has known the applicant since 1981. She states that the applicant was an adolescent when she met him and that he would accompany his father to work. She states that now the applicant has become a hard working, respectful, law-abiding adult;
- A letter dated March 15, 2001, from [REDACTED], the applicant's former neighbor. Ms. [REDACTED] states that she has known the applicant since 1981. She stated that the applicant was her neighbor and that she has known him to be a respectful and law abiding person. She states that he is a hard worker and has not been involved in any criminal activity;
- A letter notarized on September 24, 1994, from [REDACTED]. Mr. [REDACTED] states that he has known the applicant since 1980 and that in December 1987 he gave the applicant a ride to the border in Laredo, Texas, so he could visit his family. He states that the applicant returned in about January 1988 and that he knows that the applicant has been residing continuously in the United States since he first met him in 1980;
- A handwritten letter dated February 7, 2001, and a typed letter dated May 16, 2006, from [REDACTED]. Ms. [REDACTED] states that she has known the applicant since 1981. She states that the applicant is a very nice, hardworking person who has not been in trouble with the law;
- A handwritten letter dated February 7, 2001, from [REDACTED]. Ms. [REDACTED] states that she has known the applicant since 1981. She states that the applicant is a very nice, hardworking person who has not been in trouble with the law;
- A letter from [REDACTED] notarized on October 30, 1990, from [REDACTED]. Ms. [REDACTED] simply states that the applicant lived in her house with his father from February 1985 until the time the letter was notarized;
- An affidavit notarized on October 28, 1990, from [REDACTED] the applicant's former roommate. Mr. [REDACTED] states that the applicant lived with him at three different address from November 1981 to about January 1985;

An affidavit dated August 22, 1990, from [REDACTED]. Mr. [REDACTED] states that he has known the applicant since December 1981 until the date the letter was written. He states that, because of his young age, the applicant was unable to work and that he was rebellious, so his father had him work as his helper to keep an eye on him; and,

- A letter from [REDACTED], owner of [REDACTED] Roofing Company. Mr. [REDACTED] states that he knows the applicant through the applicant's father, who brought the applicant to meet Mr. [REDACTED] on several occasions and introduced him as his son. He states that the applicant has been in the area of Fort Worth and Wichita Falls for many years.

These affidavits are of little probative value and can be given little evidentiary weight, as they are not sufficiently detailed. Mr. [REDACTED] did not state the address where he and the applicant lived together during that time period or provide any details about that time period. Mr. [REDACTED] did not state when he or the applicant had begun continuously residing in the United States. Ms. [REDACTED] did not state the address of the property where the applicant lived. Ms. [REDACTED] does not explain how she dates her recollection of when the applicant lived in her house nor does she provide any contemporaneous evidence, such as a lease or rent receipts to corroborate her statement. In addition, she fails to provide sufficient details regarding the seven year period she claims the applicant lived in her house. Finally, she refers only to the time period of February 1985 forward. Mr. [REDACTED] does not explain the nature of his relationship with the applicant, whether he knew him from Mexico or the United States, where the applicant from December 1981 to 1990, and does not provide sufficient details about that time period. Mr. [REDACTED] does not appear to have knowledge about the specific dates the applicant has resided in the United States or about the locations where he has resided. These letters lack sufficient detail and can be given minimal weight as evidence of the applicant's residence in the United States during the requisite period.

Although the applicant has submitted numerous affidavits in support of his application, he 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.

Furthermore, a review of the information provided by the applicant in the record reflects that the applicant was 13 years old when he states he first entered in 1981. Several of the affiants refer to the applicant's tender age when he first entered the United States, the fact that he was too young to work, and that he accompanied his father on jobs. The applicant has not explained and the record contains no documentation regarding why the applicant was not enrolled in school if he entered the United States at age 13. Nor does the record contain an explanation or description of

what the applicant did on a daily basis between the time he entered in 1981 at age 13 and when he was considered old enough to work.

The record of proceedings contains various other documents, including a letter dated January 11, 2001, from [REDACTED], stating that the applicant worked for him on and off from 1990 until the date the letter was written; and a letter dated January 11, 2001, from [REDACTED] stating that he has known the applicant since 1990 and that they were employed by the same company. None of this evidence addresses the applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have last entered the United States without inspection in January 1988, and to have resided for the duration of the requisite period in Texas. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has failed to do so.

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.