

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L2

[REDACTED]

FILE:

[REDACTED]

Office: SEATTLE

Date:

OCT 22 2008

MSC 02 057 64574

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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, Seattle, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. The director noted an inconsistency in the applicant's testimony and application.

On appeal counsel for the applicant asserts he has established eligibility.

An applicant for permanent resident status must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. 8 C.F.R. § 245a.11(b).

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).

An applicant must establish eligibility by a preponderance of the evidence. 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 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.

Citizenship and Immigration Services (CIS) regulations provide an illustrative list of contemporaneous documents that an applicant may submit to establish presence during the required period. 8 C.F.R. § 245a.15(b)(1); *see also* 8 C.F.R. § 245a.2(d)(3)(vi)(L). Such evidence may include employment records, tax records, utility bills, school records, hospital or medical records, or attestations by churches, unions, or other organizations so long as certain information

is included. The regulations also permit the submission of affidavits and any other relevant document, but applications submitted with unverifiable documentation may be denied. Documentation that does not cover the required period is not relevant to a determination of the alien's presence during the required period and will not be considered or accorded any evidentiary weight in these proceedings.

On June 23, 2005, the director sent the applicant a Notice of Intent to Deny (NOID), which stated that the evidence submitted by the applicant was insufficiently probative of continuous unlawful residence in the U.S. from prior to January 1, 1982 through May 4, 1988, and continuous physical presence in the U.S. from November 6, 1986 through May 4, 1988.

The applicant submitted a written response.

On February 6, 2004, the director denied the application because the applicant had failed to establish his continuous unlawful presence during the required period.

On appeal the applicant asks that CIS reconsider his application.

Relevant to the period in question the record contains the following evidence:

- (1) Letter, signed by [REDACTED] sister of the applicant, asserting the applicant came to the United States in 1981, lived with her until 1992, and that he worked at her restaurant. [REDACTED]
- (2) Letter, signed by [REDACTED] asserting she knew the applicant in Mexico in 1971, and has personal knowledge of the applicant's presence in the United States since 1987.
- (3) Letter, signed by [REDACTED] asserting he knew the applicant in Mexico in 1971, and asserts that he has been in the United States since 1980 or 1981.
- (4) Letter, signed by [REDACTED] asserting she has known the applicant since 1981 [dates altered], and that she saw the applicant attend her church.
- (5) Letter, signed by [REDACTED], asserting that he has known the applicant to reside in the United States since 1980 or 1981.
- (6) Letter, signed by [REDACTED] asserting he has known the applicant since the early 1970s, and that the applicant has been in the United States since 1982 [date altered].

As stated above, the inference to be drawn from the documentation provided shall depend on the *extent* of the documentation. The minimal evidence furnished cannot be considered extensive, and in such cases a negative inference regarding the claim may be made as stated in 8 C.F.R. § 245a.12(e).

In this case the applicant has not submitted any primary documentation, and relies solely on affidavits. As noted by the director the applicant's assertions reside on a questionable characterization of events, that he did not attend school, and that he cannot provide any other documentation. The applicant asserted on his I-687, Application for Status as a Temporary Resident, that he came to the United States in 1980. A number of affiants cannot attest when exactly the applicant arrive, and assert generally 1980 or 1981. The applicant's sister asserts he

arrived in 1981, and in completing his I-485 application the applicant asserts he arrived in 1981, when he was 10. The applicant's claim that he never entered school because he was afraid of immigration is not plausible, as public education in the United States is to be provided without regard to immigration status. Meanwhile, he apparently had no similar fears about working, despite severe restrictions on employment based on immigration status.

Documents which generically assert an affiant has known an applicant since a particular year are not sufficiently probative to support assertions of eligibility. Relationships based on casual knowledge – such as having met at a party, seen in church on Sunday mornings, or other casual acquaintances – are not sufficiently probative to demonstrate actual direct knowledge of an applicant's eligibility. Such casual knowledge of an applicant lacks the context to be sufficiently probative such that CIS can make an informed determination that the applicant has been residing continuously in an unlawful status for the duration of the required period. Counsel fails to understand that the applicant must submit *evidence* of the applicant's eligibility. Submitting a third party statement in lieu of evidence requires that such statement consist of more than the simple statement such as "I know the applicant has been living in the United States since 1979." Without sufficient detail to provide context to a statement, and the ability of CIS to verify the details of a statement, it is merely an unsupported statement and does not constitute evidence.

The general lack of detail concerning the applicant's whereabouts and activities during the required period reflects poorly on his assertions of continuous unlawful residence and presence. The applicant has made alleged a minimal body of facts in an attempt to satisfy the criteria for legalization, leaving CIS with no context in which to verify or corroborate his assertions. Without the context in which to view the applicants assertions they appear isolated factually, do not present an overall picture of the applicant's residence and presence, are not corroborated by other assertions contained in the record, and are not amenable to verification. As an example, the applicant has not provided any evidence of doctor's visits, immunizations, letters or correspondence addressed to him or his sister, or any clues about how he could survive in the United States with only a 4th grade education from Mexico. When the facts asserted in the record are viewed in their totality with the evidence presented they are not sufficiently supported to establish eligibility.

As such, the applicant has not established the eligibility and the appeal will be dismissed.

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