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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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[REDACTED]

FILE: [REDACTED]  
MSC 02 198 60603

Office: DALLAS

Date:

OCT 22 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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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 application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, Dallas, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

Counsel for the applicant requested that the applicant's case be reopened *sua sponte* by Citizenship and Immigration Services (CIS) because the Notice of Decision (NOD) to deny the application had been mailed to the applicant at an incorrect address – therefore he was unable to submit a timely appeal. The AAO initially rejected the appeal on April 1, 2008, but subsequently reopened the matter on August 1, 2008, and provided counsel with copies of the Notice of Intent to Deny (NOID) the application, as well as the NOD, in order to allow the applicant an opportunity to respond. In response, counsel submits additional documentation.

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 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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). *See* 8 C.F.R. 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.12(f). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

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 filed the current Form I-485, Application to Register Permanent Resident Status or Adjust Status, under the LIFE Act on April 16, 2002. On May 28, 2005, the director denied the application.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

The record reflects that the applicant has submitted the following documentation in an attempt to establish his continuous unlawful residence in the United States during the requisite time period:

Employment letters

- Letters, dated June 5, 1990, and February 28, 1995, from [redacted] of [redacted] Dallas, Texas. While the letters (which are exact photocopies in text, but contain different dates of notarization) are somewhat unclear as to by whom the applicant was employed during what time periods, it appears that [redacted] attests that while he ([redacted] was a foreman for J & R Construction in Dallas, Texas, owned by [redacted], the applicant was employed by [redacted] [redacted] - from July or August 1981 until late 1983 - and that during that time period, Mr. [redacted] and the applicant used to do plywood decking for J & R

Construction. Subsequently, [REDACTED] employed the applicant until September 1986 and the applicant then worked for [REDACTED] again until late 1988.

Neither of the employment letters provided comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i) in that they fail to provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; 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. Furthermore, an attempt by Citizenship and Immigration Services (CIS) to contact J & R Construction at the number given by [REDACTED] was unsuccessful.

Affidavits from acquaintances

- A letter, dated June 8, 1990, from [REDACTED] of [REDACTED] Dallas, Texas, stating that the applicant lived at [REDACTED], Dallas, Texas, from August 1981 until November 1986. In a second letter, dated March 1, 1995, [REDACTED] reiterates the information previously provided regarding the applicant's residence at [REDACTED], Dallas, Texas, from August 1981 until November 1986.
- A fill-in-the-blank affidavit, dated June 15, 1990, from [REDACTED] of [REDACTED] Garrett, Dallas, Texas, stating that the applicant lived at [REDACTED], Dallas, Texas, from November 1986 until September 1988. In a second affidavit, dated February 28, 1995, Mr. [REDACTED] states that the applicant is his nephew and reiterates the information previously provided regarding the applicant's residence at [REDACTED], Dallas, Texas, from November 1986 until September 1988.
- A letter, dated June 18, 1990, from [REDACTED] of [REDACTED] Dallas, Texas, stating that the applicant lived at [REDACTED], Dallas, Texas, from August 1981 until November 1986. In a second letter, dated March 3, 1995, Mr. [REDACTED] reiterates the information previously provided regarding the applicant's residence at [REDACTED], Dallas, Texas, from August 1981 until November 1986.
- A letter, dated March 22, 2002, from [REDACTED] stating that the applicant resided with him at [REDACTED], Dallas, Texas, from 1982 to November 1985. The applicant also submits photocopies of envelopes and registered mail receipts showing that [REDACTED], residing at [REDACTED], Dallas, Texas, mailed letters/documents to an address in Mexico in June 1983, April 1984, June 1984, and July 1984.

A letter, dated March 25, 2002, from [REDACTED] of Garland, Texas, stating that the applicant lived with her at [REDACTED], Dallas, Texas, from 1980 to 1984. In a second declaration, dated February 7, 2004, Ms. [REDACTED] amended her

previous letter and stated that she had been acquainted with the applicant since he first came to the United States in 1981 and shared an apartment with her father, [REDACTED] and the rest of her family, at [REDACTED], Dallas, Texas, for about 2 years. After that, [REDACTED] states that they lived at separate addresses.

[REDACTED] further states that the applicant is the cousin of her husband, [REDACTED], who she married in 1981, but that she met the applicant months later when he came to live with them. She also states that, to the best of her knowledge, the applicant has maintained physical residence in the United States from the time she met him until the date of signing the declaration – although he visits her and her husband more frequently than they are able to visit him at his home at [REDACTED], Dallas, Texas.

Other than [REDACTED]'s second letter, that recanted an earlier statement, none of the above-listed affiants state in any detail how they first met the applicant in the United States, or how frequently and under what circumstances they saw the applicant during the requisite period, and provide little information for concluding that they had direct and personal knowledge of the events and circumstances of the applicant's residence and physical presence in the United States throughout their 21-plus year relationships with the applicant. Furthermore, efforts made by CIS to contact Mr. [REDACTED] and [REDACTED] were unsuccessful. When contacted, [REDACTED] stated that although he remembered the applicant, he did not have "any specific evidence at hand." As such, the affidavits/letters/declarations can only be afforded minimal weight as evidence of the applicant's residence and presence in the United States throughout the requisite period.

In summary, the applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), no hospital or medical records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv), and no attestations from churches, unions, or other organizations. The applicant also has not provided documentation (including, for example, money order receipts, passport entries, children's birth certificates, bank book transactions, letters of correspondence, a Social Security card, or automobile, contract, and insurance documentation) according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (K). The documentation provided by the applicant consists solely of third-party affidavits ("other relevant documentation"). These documents, for the most part, lack specific details as to how the affiants knew the applicant – how often and under what circumstances they had contact with the applicant – during the requisite time period from 1982 through 1988.

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 (5<sup>th</sup> ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

Based on the documentation, noted above, the applicant has failed to establish, by a preponderance of the evidence, that he entered the United States before January 1, 1982, and maintained continuous unlawful residence since such date through May 4, 1988, as required for eligibility for adjustment of status to permanent resident status under section 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.

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