

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529-2090
MAIL STOP 2090



U.S. Citizenship
and Immigration
Services

L2

FILE:

MSC 02 243 66683

Office: HOUSTON

Date:

OCT 31 2006

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.

A handwritten signature in black ink, appearing to read "Robert P. 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 Director, Houston, 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 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, the applicant asserts that the applicant has submitted sufficient evidence. Counsel submits additional documents on appeal.

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 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).

In the Notice of Intent to Deny (NOID), dated June 2, 2006, the director stated that the applicant failed to submit sufficient evidence demonstrating his continuous unlawful residence in the United States during the requisite period. The director noted that the applicant, a Mexican citizen, claimed that he never attended school either in Mexico, or, in the United States. The director also noted that on September 10, 2003, the applicant appeared for an interview but was unable to complete the interview in English, and therefore, he was unable to demonstrate his knowledge of English, and U.S. History and government. At that interview the applicant stated that he first entered the United States in August 1980. However, at a second interview, on June 1, 2006, the applicant testified that he first entered the United States in October 1981, and the applicant was literate in both Spanish and English. The director determined that the applicant could not have been residing in the United States since prior to January 1, 1982, as he claims. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated June 2, 2006, the director noted that the applicant responded to the NOID, and submitted additional evidence and denied the application based on the reasons stated in the NOID. The director noted that the additional evidence submitted was contradictory to the evidence previously provided.

On appeal, counsel asserts that the applicant has submitted an affidavit that clarifies contradictions between his testimony and his initial application. Counsel states that the applicant arrived in the United States in 1981 and lived with his brother at a home that belonged to [REDACTED]. Counsel also states that the brother stated a different address for an unknown reason. Counsel submits additional affidavits on appeal.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate his continuous residence in the United States in an unlawful status during the requisite period. In an attempt to establish continuous unlawful residence in the United States during the requisite period since prior to January 1, 1982, the applicant submits letters of employment, and affidavits as evidence to support his Form I-485 application. The AAO has reviewed the entire record. Here, the submitted evidence is not relevant, probative, and credible.

Employment Letters

The applicant submitted a letter of employment from [REDACTED], owner of Greenwood Village Apartments, located at [REDACTED], Greenwood, Indiana. The August 10, 1988 letter states that the applicant had been employed as a contract laborer from January 10, 1987 to August 10, 1988.

It is noted however, that the letter failed to 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 as required under 8 C.F.R. § 245a.2(d)(3)(i).

Affidavits and letters

The applicant submitted:

1. A sworn affidavit from [REDACTED], dated March 15, 2007, stating that he knows that the applicant has resided in the United States since 1981. Mr. [REDACTED] however, does not indicate how he dates his acquaintance with the applicant and whether or how he maintained contact with the applicant.
2. A sworn affidavit from [REDACTED] dated March 15, 2007, stating that he knows that the applicant has resided in the United States since May 1983. Mr. [REDACTED] however, does not indicate how he dates his acquaintance with the applicant and whether or how he maintained contact with the applicant.
3. A sworn affidavit from [REDACTED], dated June 12, 2006, stating that he has known the applicant since 1983. It is noted that although [REDACTED] states that he has known the applicant since 1983, he also referenced an undated affidavit from the applicant (which [REDACTED] attests to be true) wherein the applicant states that he first entered the United States in August 1981, when he was eight years. Also, [REDACTED] does not indicate how he dates his acquaintance with the applicant and whether or how he maintained contact with the applicant.
4. A sworn affidavit from [REDACTED] dated June 7, 2007, stating that the applicant has been living at his house from December 1981 to January 1988. Mr. [REDACTED] however, does not provide any details of the claimed residence of the applicant at his residence, and does not indicate how the applicant, who was eight years old in 1982 sustained himself from his claimed entry date until adulthood. Also, [REDACTED] does not indicate where his residence was located during that time.
5. A sworn affidavit from [REDACTED], dated May 15, 1991, stating that he is the brother of the applicant and that he provided living accommodations, food, and all vital necessities for applicant who resided with him from October 10, 1981 until August 1988. It is noted, however, that [REDACTED] does not state why, as his guardian, he did not send the applicant, who was 8 years old in 1982, to either primary school or secondary school.
6. A sworn affidavit from [REDACTED], dated May 27, 1991, stating that he has known the applicant for 9½ years. Mr. [REDACTED] states that the applicant is a family

friend, but does not indicate how he dates his acquaintance with the applicant and whether or how he maintains contact with the applicant.

7. A sworn affidavit from [REDACTED], dated May 27, 1991, stating that she has known the applicant for 7½ years. Ms. [REDACTED] states that the applicant is a friend from church who assists the church. The affiant, however, does not indicate whether the applicant has been a continuous resident since that time, nor does she indicate how she dates her acquaintance with the applicant, and whether or how she maintains contact with the applicant.

The applicant has submitted letters and affidavits in support of his application, however, contrary to counsel's assertion, the applicant has failed to submit sufficient reliable evidence of his continuous residence in the United States throughout the requisite period. As noted above, the employment letter and affidavits are lacking in detail. Also, the affidavit from [REDACTED], the applicant's brother, stating that he provided living accommodations, food, and all vital necessities for the applicant when he resided with him from October 10, 1981 until August 1988, is questionable. It is unlikely that the affiant would have his brother live with him since he was eight years old and would not send the child to either elementary or high school. This casts considerable doubts on whether the information in the affidavit is true.

The applicant claims that he has been residing in the United States since 1981, when he was 8 years old. However, the applicant does not submit any elementary school or high school records. The applicant states that he was afraid to go to school. It is noted that the applicant is literate in both English and Spanish. Therefore, the applicant must have had some formal education, either in the United States or in Mexico.

These discrepancies cast considerable doubt on whether the applicant resided in the United States since 1981 as he claims. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status during the requisite period.

The applicant has not provided sufficient reliable evidence of residence in the United States for 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. 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.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 upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

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.