

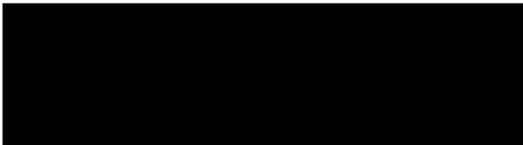
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



FILE:

MSC 02 218 64121

Office: DALLAS

Date:

SEP 02 2008

IN RE: Applicant:



APPLICATION:

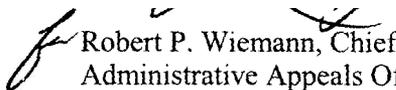
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), *amended by* LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

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

The district director determined that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel submits an affidavit from the applicant reasserting his eligibility for LIFE Act adjustment, and stating that he has submitted all of the evidence available, and affidavits with contact information. Counsel does not submit additional evidence 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).

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.

On April 20, 2006, the director issued a notice of intent to deny (NOID) informing the applicant of the Service's intent to deny his LIFE Act application because he had failed to establish the requisite continuous residence. The director noted that the applicant failed to submit sufficient verifiable evidence to support his application. The applicant was granted thirty days to respond to the notice. In response to the NOID the applicant submitted a letter with telephone numbers for five individuals who submitted affidavits on his behalf, and notarized letters from [REDACTED], [REDACTED], and [REDACTED].

In the Notice of Decision, dated March 21, 2007, the director determined that the applicant's response to the NOID failed to overcome the reasons for denial and denied the instant application after determining that the applicant had failed to establish the requisite continuous residence. The director noted that the applicant failed to submit verifiable affidavits, and stated that it was not probable that the applicant entered the United States at age 12 and supported himself as a bricklayer.

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 during the requisite period. The applicant submitted letters and affidavits as evidence to establish the requisite continuous residence in support his Form I-485 application. The AAO reviewed the entire record. Here, the submitted evidence is not relevant, probative, and credible.

Employment Letters

The applicant submitted a notarized letter of employment from [REDACTED] of [REDACTED] Construction, located at [REDACTED], Dallas, Texas, stating that the applicant had been employed as a brick and concrete layer from March 1981 to December 1985. [REDACTED] states that he paid the applicant in cash and did not keep records. It is noted 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).

The applicant also submitted an undated notarized letter of employment from [REDACTED], owner of [REDACTED]'s Masonry, located in Dallas, Texas, stating that the applicant had been employed as a brick layer laborer from January 12, 1986.

In addition, the applicant submitted a letter from [REDACTED], sworn to on May 17, 2006, stating that the applicant worked for him as an assistant brick layer from January 1986 to 1990. Mr. [REDACTED], however, 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 & Letters

The applicant submitted the following:

- 1) An affidavit from [REDACTED], notarized on May 15, 2006, stating that she has known the applicant to reside in the United States since 1981 when she met him at a store in Dallas, Texas. The affiant states that she and her husband became friends with the applicant and he visits them at their farm occasionally. In a separate notarized undated letter from [REDACTED], she states that she has known the applicant since 1981, and they have maintained a good friendship.
- 2) An affidavit from [REDACTED] sworn to on May 17, 2006. The affiant states that he and the applicant lived together in Dallas, Texas, from 1981-1986.
- 3) An affidavit from [REDACTED] sworn to on July 1, 1990. The affiant states that he met the applicant on March 15, 1981, and they have been friends and they keep in touch. In a second affidavit from [REDACTED], notarized on May 17, 2006, he states that he has known the applicant to reside in the United States since June 1981 when he met him in Forth Worth, Texas. The affiant states that he and applicant see each other every two weeks.
- 4) An affidavit from [REDACTED], notarized on August 15th 2004, stating that he has known the applicant to reside in the United States since 1981 when he met him through the applicant's uncle, [REDACTED]. The affiant also states that he and the applicant became friends because they are of close age, and shared similar interests and faced similar problems as they grew up, and, they see each other on a regular basis when they organize family activities.
- 5) An undated letter from [REDACTED] stating that he has known the applicant since 1982 when he met him through the applicant's uncle, [REDACTED]. Mr. [REDACTED] states that he and the applicant became friends and visit each other frequently.
- 6) A undated letter from [REDACTED] stating that he has known the applicant since May 1985 when he met the applicant at Herman Park of Houston, and they have been friends ever since.
- 7) A letter from [REDACTED], of [REDACTED], located at Plano Texas, notarized on March 1, 2002. [REDACTED] states that he has known the applicant since 1987, and that the applicant has continued to do business with his company.

The applicant also submitted four (4) photographs. Next to each photograph a handwritten date is inscribed. However, the photos are not probative as it cannot be determined where and when the photos were taken.

Contrary to counsel's assertion, the applicant has failed to submit sufficient credible evidence to establish his continuous residence in the United States during the requisite period. The applicant has submitted questionable documentation. The applicant claims that he entered the United States in March 1981, when he was eleven (11) years old. However, he submitted an employment letter from ██████████ Construction stating that the applicant had been employed as a brick and concrete layer from March 1981 to December 1985. It is noted that the employer states that verifiable documentation is not available as the company did not keep records. Given the lack of verifiable information, and the young age of the applicant in 1981 through 1985 it is unlikely that at age eleven years the applicant would be employed as a brick layer as he claims. It is also noted that the applicant has not provided any school or medical records whatsoever, and he has not provided a reasonable explanation why school or medical records are not available. In addition, the applicant stated on his Form G-325A that he was employed as a Bricker at ██████████, Garland, Texas, from 1981 to March 27, 2002. However, on his Form I-687 the applicant does not list that employment.

The above unresolved discrepancies cast considerable doubt on whether the applicant's claim that he illegally entered the United States before January 1, 1982, and resided continuously in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988, is true. 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). 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.

Also, stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affiants included any supporting documentation of the affiant's presence in the United States during the requisite period. 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.

The applicant has, therefore, failed to establish that he resided in continuous unlawful status in the United States from before January 1, 1982 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.