

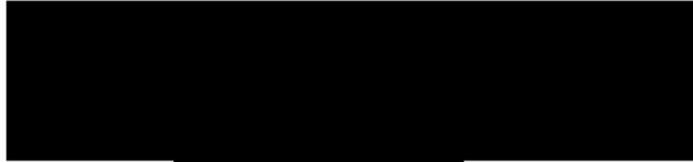
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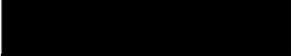


U.S. Citizenship
and Immigration
Services

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FILE: 
MSC 03 094 60316

Office: DALLAS

Date: **SEP 22 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: SELF-REPRESENTED

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 denied the application on December 10, 2004, after determining 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. The director noted that the applicant failed to respond to a May 3, 2004 notice of intent to deny (NOID) wherein the director requested that the applicant provide additional evidence to establish his continuous residence. The record reflects, however, that the NOID and the director's denial decision were returned as undeliverable.

On appeal, the applicant states that when he inquired about the status of his application an immigration officer informed him, on September 14, 2006, that his application had been denied. Given the applicant's statement, on July 17, 2008 the AAO provided the applicant with a copy of the May 3, 2004 NOID, and the applicant was granted thirty days to respond to the notice.

The record reflects that the applicant timely responded to the NOID on August 14, 2008. In his response, the applicant states that he has established the requisite continuous residence. With his response the applicant submits a copy of a previously provided letter of employment from [REDACTED] Manager of [REDACTED] Restaurant, dated October 9, 1990, stating that the applicant had been employed at several of their restaurants since 1980. No additional evidence was submitted

The AAO maintains plenary power to review this matter on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The federal courts have long recognized the AAO's *de novo* review authority. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted on appeal.¹

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.

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in this case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

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.

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, affidavits, and receipts, and earnings statements, as evidence to establish the requisite continuous residence in support of his Form I-485 application. The AAO has reviewed the entire record.

The AAO notes that the applicant has submitted sufficient credible evidence in the form of receipts and earnings statements which establishes his residence from 1987 through 1988. However, the evidence submitted to establish the applicant’s continuous residence from January 1, 1982 through 1986, is not relevant, probative, and credible.

Employment Letters

The applicant submitted a letter of employment from [REDACTED] Manager of [REDACTED] Restaurant, dated October 9, 1990, stating that the applicant had been employed at several of their restaurants since 1980. [REDACTED] specifies that the applicant had been employed at Taiwan Restaurant – Greenville Avenue, from 1980 to 1983; at Han Chu Restaurant, from 1984 to 1987, and at Taiwan Restaurant – Beltline Road, from 1988 to 1989. [REDACTED] states that “the exact dates are not currently available” and provides the “approximate times” of the applicant’s employment, so it is not clear when in 1983 his employment at Taiwan Restaurant – Greenville Avenue ended, or when in 1984 his employment at [REDACTED] Restaurant began.

Also, 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).

In addition, the applicant submitted an October 13, 1990 letter from [REDACTED] President of the Dallas Soccer Association, located in Dallas, Texas. [REDACTED] states that he has known the applicant since 1981. However, [REDACTED] does not indicate whether his acquaintance with the applicant was in the United States and whether the applicant has been a continuous resident since that time.

It is noted that [REDACTED] does not state how he dated his acquaintance with the applicant, or how frequently and under what circumstances he met the applicant. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, the affiant did not include 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.

It is also noted that contrary to the applicant’s claim that he has resided continuously in the United States since 1980, the record reflects that the applicant was apprehended on entry by the U.S. Border Patrol, San Antonio, Texas, on August 12, 1983. There is no indication on the applicant’s Form I-687, Application for Status as a Temporary Resident, or in the record of proceedings, that the applicant ever departed the United States in 1982 or in 1983. Therefore, the applicant cannot establish that he resided continuously in the United States since January 1, 1982.

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 throughout the requisite period.

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.