

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



**U.S. Citizenship  
and Immigration  
Services**

**PUBLIC COPY**

L2

[REDACTED]

FILE:

[REDACTED]

MSC 03 245 61487

Office: LOS ANGELES

Date:

**SEP 26 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 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:** On May 9, 2007, the District Director, Los Angeles, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application, finding that the applicant did not establish, by a preponderance of the evidence, that he entered the United States before January 1, 1982, and resided continuously in the United States, prior to January 1, 1982, and through May 4, 1988. The director concluded the affidavits the applicant submitted were insufficient to establish his burden of proof. The director noted that the affidavits the applicant submitted were not specific or detailed enough to render his claim credible.

On appeal, counsel for the applicant asserts that the director did not properly apply the preponderance of the evidence standard to the documentation the applicant submitted. Counsel asserts that the applicant furnished numerous documents, which along with credible affidavits, are more than sufficient to meet the applicant's burden.

An applicant for permanent resident status under section 1104 of the LIFE Act 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. See § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite period, 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 states 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 or 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 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 record reflects that on June 2, 2003, the applicant submitted the current application. On November 8, 2007, the applicant appeared for an interview based on the application.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden of establishing by a preponderance of the evidence, that his claim of entry into the United States before January 1, 1982, and continuous residence in the United States during the requisite period is probably true. Upon examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has failed to meet this burden.

The record of proceeding contains the following evidence relating to the requisite period:

#### Letters and Affidavits

- A letter sworn to on April 30, 2007, from [REDACTED] provides her current address and states that she has known the applicant for the last 26 years. Attached to the letter are two photo identity documents, including Ms. [REDACTED] California Senior Citizen Identification Card and her naturalization certificate. [REDACTED] provides the address where she lived when the applicant arrived in the United States, [REDACTED] but does not provide the date when he arrived and does not otherwise indicate that she has any personal knowledge of his claimed January 1981 entry into the United States. She states that the applicant lived in her home because her husband had just died and the applicant was the son of her husband's best friend. She states that the applicant lived with her for nine years but does not specify which nine years. She states that the applicant contributed about \$120 per month towards rent and food

expenses but that she did not give him any receipts. She states that after he left her home, they remained friends, but again, she does not state when he left her home. She asserts that she knows his wife and children and that he is a good person. Although [REDACTED] claims that the applicant lived with her for nine years, her statement lacks any details demonstrating any personal knowledge of the applicant's entry into the United States and his residence here during the requisite period, other than that he helped with monthly household expenses. She does not even provide the date she met him or the dates he lived with her. Lacking such relevant detail, the letter can be afforded only minimal weight as evidence of the applicant's residence in the United States for the requisite period;

- An "Affidavit of Witness" form, sworn to on May 23, 2003. The form, signed by [REDACTED], states that the affiant has personal knowledge that the applicant has resided in the United States, in Los Angeles, California from January 1981 to the present. The form language allows the affiant to fill in a statement that he or she "is able to determine the date of the beginning of his or her acquaintance with the applicant in the United States from the following fact(s): \_\_\_\_." [REDACTED] added: "I know [REDACTED] since he was a little kid in Mexico. When he came to the United States he shared and co-habited with me at [REDACTED] Ca. from 01/81 to 1989 than we moved to my current address when I bought my house. Since then we still have a strong friendship. For questions please write me to the address above." Although the dates and addresses provided are generally consistent with the information provided on the applicant's Form I-687, this statement can be given minimal weight as evidence of the applicant's continuous residence for the same reasons mentioned above for the April 30, 2007, letter from [REDACTED] and,
- An employment verification letter from [REDACTED] owner of the Cinco de Mayo Tacos restaurant in Culver City, California. In the undated, unnotarized letter, [REDACTED] asserts that the applicant has been his employee since 1985. He asserts that during his 18 years of work, the applicant has been a fine employee and that he is a person of fine moral character. He states that his duties are to prepare American and Mexican food and that he presently earns \$300 per week. This letter can be given little evidentiary weight as it fails to comply with the regulatory requirements at 8 C.F.R. § 245a.2(d)(3)(i). The employer does not 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, or 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.

For the reasons noted above, these affidavits can be given little evidentiary weight and are of little probative value as evidence of the applicant's residence and presence 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 record of proceedings contains other documents, including 1989, 1990, and 1991 Internal Revenue Service (IRS) Forms W-2, Wage and Tax Statements, issued to the applicant by [REDACTED] Drive-In, as well as copies of IRS Forms 1040, U.S. Individual Income Tax Returns, for the same years; a 1994 Form W-2, issued by M. P. Management as well as other tax and employment records from 1997 through 2001; a June 20, 1997, Fifth Third Bank deposit slip; a 1994 registration form for L.A. Unified School District, Division of Adult Education; the applicant's marriage certificate indicating that he was married on March 16, 2000, in Los Angeles, California; the birth certificate of his child, [REDACTED] born on [REDACTED] in Los Angeles, California; and various utility bills dated in 2000, 2001, and 2002. All of this evidence is dated after May 4, 1988, and does not address the applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have first entered the United States without inspection in January 1981, and to have resided for the duration of the requisite period in California. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has failed to do so. In this case, his assertions regarding his entry are not supported by any credible evidence in the record.

Having examined each piece of evidence, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has not shown by a preponderance of the evidence he entered into the United States before January 1, 1982, and that he resided continuously in an unlawful status for the requisite period.

The absence of sufficiently detailed and probative documentation to corroborate the applicant's claim of entry and continuous residence for the entire requisite period, detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.12(e), 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 on two affidavits from the same person and one employment verification letter, which lack relevant details, and the lack of any probative evidence of his entry and residence in the United States from prior to January 1, 1982, through May 4, 1988, the applicant has failed to establish by a preponderance of the evidence that he maintained continuous, unlawful residence in the United States as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, 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.