



U.S. Citizenship  
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[REDACTED]

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FILE:

[REDACTED]

Office: DALLAS

Date: MAY 24 2006

MSC 02 001 64121

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. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district 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.

On appeal, counsel asserts that the applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel provides copies of additional documents along with previously submitted documents in support of the appeal.

An applicant for permanent resident status 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. 8 C.F.R. § 245a.11(b).

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).

Here, the submitted evidence is not relevant, probative, and credible. In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence:

- An affidavit notarized July 20, 1990 from [REDACTED] De Soto, Texas, who indicated that the applicant has been employed at [REDACTED] since 1984. It is noted that the month the applicant's employment commenced has been altered and is indecipherable.
- An affidavit notarized July 21, 1990 from a brother, [REDACTED] of Dallas, Texas, who attested to the applicant's residences during the requisite period in Dallas at [REDACTED] and at [REDACTED].
- An affidavit notarized July 21, 1990 from an acquaintance, [REDACTED] who attested to the applicant's residence in Dallas, Texas since December 12, 1981.
- An affidavit notarized July 21, 1990 from [REDACTED] of Farmers Branch, Texas, who indicated that he has known the applicant since November 10, 1981. Mr. [REDACTED] asserted that due to the applicant's age, he did not work, but each time the applicant visited his home, he "worked for me and I would give him \$20 a day for helping me around the house."
- A statement dated July 11, 2001 from a brother, [REDACTED] of Farmers Branch, Texas who indicated that he and the applicant resided at the same residence for a while from June 1981.
- A letter dated December 20, 2002 from [REDACTED] accounting manager of Best Western in Dallas, Texas, who indicated that the applicant and his brother, [REDACTED] resided at the hotel from January 1, 1982 to April 1988.

In a Notice of Intent to Deny dated January 12, 2004, the director advised the applicant that the affidavits submitted constituted secondary evidence and could not be corroborated. The applicant, in response, submitted:

- An additional statement from [REDACTED] who indicated that he has known the applicant since "July of 1981."
- A notarized affidavit from [REDACTED] of Dallas, Texas, who indicated that he met the applicant through the applicant's brother, Martin in 1981 while he and [REDACTED] were employees at [REDACTED]. Mr. [REDACTED] asserted that the applicant resided with [REDACTED] at the [REDACTED] during [REDACTED] employment.
- A letter dated January 19, 2004 from [REDACTED] director of Sales at Best Western in Dallas, Texas, who indicated that she has known the applicant since 1981. Ms. [REDACTED] asserted the applicant and his brother [REDACTED] resided at the [REDACTED] now Best Western from January 1, 1982 to April 1988. Ms. [REDACTED] attested to the letter previously written by [REDACTED].
- A notarized affidavit from [REDACTED] who attested to the applicant's 1981 entry into the United States. Mr. [REDACTED] asserted that the applicant resided with him at the [REDACTED] at [REDACTED], Dallas, Texas. Mr. [REDACTED] stated that in 1984 the applicant accompanied him to his job and he "gave him money for his own for helping me."
- A notarized affidavit from [REDACTED] of Flower Mound, Texas, who indicated that she met the applicant in 1984 at the [REDACTED] while she was an employee of the hotel.

On appeal, the applicant submits:

- Statements dated April 10 and 24, 2004 from [REDACTED] who reaffirmed her previously claim that the applicant and his brother [REDACTED] resided at the [REDACTED] from January 1, 1982 to April 1988, while the brother was an employee of the hotel.
- A notarized affidavit from [REDACTED] of Dallas, Texas, who indicated that he met the applicant through the applicant's brother, Martin in 1981 while he was an employee at [REDACTED]. Mr. [REDACTED] attested to the applicant's residence at the hotel.
- An additional letter dated January 21, 2004 from [REDACTED] who reaffirms the applicant's residence at the Ramada Inn from 1982 through 1988.

Counsel also provides a copy of an Interpreter Release regarding the decision in *Matter of E--M--*, *supra* in which "a preponderance of the evidence" is defined along with a 1989 memorandum of the legacy Immigration and Naturalization Service (legacy INS) entitled "Documentary Evidence for Legalization Applications (Form I-687)." The memorandum provided guidance on the evidentiary weight of affidavits in legalization applications under section 245A of the Immigration and Nationality Act (the Act).

In ascertaining the evidentiary weight of the affidavits submitted, Citizenship and Immigration Services must determine the basis for the affiant's knowledge of the information to which he/she is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record.

The aforementioned legacy INS memorandum in 1989, which provides the following guidance on the evidentiary weight of affidavits in legalization applications under section 245A of the Immigration and Nationality Act (the Act):

In those applications where the only documentation submitted is affidavits, if the affidavits are credible and verifiable, are sufficient to establish the facts at issue and there is no adverse information, the application shall be approved. If found insufficient or not credible, attempts to verify the authenticity of the information should be made ...

The AAO agrees with counsel that the 1989 INS memorandum, applicable to legalization applications under section 245A of the Act, provides equally valid guidance now for adjudicating legalization applications under section 1104 of the LIFE Act. Although the director did verify the authenticity of the documentation submitted by [REDACTED], the AAO does not view the affidavits discussed above as substantive enough to support a finding that the applicant entered and began residing in the United States before January 1, 1982. The applicant has put forth contradicting statements for which no explanation has been provided. Specifically:

1. The applicant, on his Form I-687 application, did not claim residence at either the [REDACTED] or [REDACTED] during the requisite period. The addresses listed on the Form I-687 application and in [REDACTED]'s affidavit do not correspond with the address of [REDACTED].
2. [REDACTED]'s claim that in 1984 he took the applicant with him to his employment "so that he could me help in the job" contradicts the applicant claim, on his Form I-687 application, to have been employed at [REDACTED] during the same time period. Mr. [REDACTED]'s affidavit raises questions of credibility as he only attested to the applicant's employment commencing in 1989.

These factors raise questions about the authenticity of the affiants' affidavits who attested to the applicant's alleged residence at the [REDACTED]. As such, it is determined that these affidavits are not plausible, credible, and consistent both internally and with the other evidence of record.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

Given the credibility issues arising from the documentation provided by the applicant, it is determined that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982 and resided in this country in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant 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.