U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: HOUSTON Date: MAY 24 2006

MSC 02 143 66853

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, Houston, Texas, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

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 had previously submitted an explanation regarding the 1982 and 1983 wage and tax statements. Counsel states that the applicant has met his burden of proving by a preponderance of the evidence that he was present in the United States from prior to January 1, 1982 through May 4, 1988. Counsel provides additional documents along with copies of previously submitted documents in support of the appeal.

It is noted that the director, in denying the application, did not set forth the specific reasons for the denial pursuant to 8 C.F.R. § 103.3(a)(1)(i). As such, the documentation submitted throughout the application process will be considered on 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).

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence:

- A lease agreement entered into on December 28, 1985 for residence at [redacted] Houston, Texas for the forthcoming year.
- A letter dated February 19, 1991 from [redacted] area director of the President & First Lady Health & Racquetball Clubs in Houston, Texas. [redacted] indicated that according to its records, the applicant has been a member since May 15, 1984.
- An affidavit dated April 1, 1991 from [redacted] of Houston, Texas, who attested to the applicant's Houston residences at [redacted] from January 1981 to December 1982 and [redacted] from January 1983 to December 1985. The affiant indicated that he was the applicant's roommate.
- A letter dated March 21, 1991 from [redacted] a doctor in Houston, Texas, who indicated that the applicant was seen in his office on May 15, 1984, June 10, 1985 and January 19, 1986.
- An affidavit notarized March 7, 1991 from [redacted] of Houston, Texas, who indicated that he met the applicant in 1983 at the President & First Lady Health & Racquetball Clubs. [redacted] asserted that he and the applicant visited the club together. [redacted] attested to the applicant's Houston residences at [redacted] and [redacted]
- An affidavit notarized February 21, 1991 from [redacted] of Houston, Texas, who indicated that he was coworker of the applicant at Property Management Systems from January 1981 to January 1982. The affiant asserted that he and the applicant have kept in touch since that time.
- A letter dated January 17, 1991 from [redacted] supervisor of Property Management Systems in Houston, Texas who indicated that the applicant was employed as a janitor from February 1981 to January 1982.
- Wage and tax statements for 1982 and 1983 from the Ramada Inn Hotel in Houston, Texas, which listed the applicant's Houston addresses as [redacted] and [redacted] respectively.
- A letter dated March 14, 1991 from [redacted], a representative in the personnel department of Ramada Inn Central in Houston, Texas, who indicated that the applicant was employed as a maintenance man from February 1982 to December 1983.
- A wage and tax statement for 1987 from Gulf Metal Industries in Houston, Texas, which listed the applicant's Houston address as [redacted]
- A letter dated February 11, 1991 from [redacted] assistant manager of Gulf Metal Industries, Inc. in Houston, Texas, who indicated that the applicant has been employed as a machine operator since January 1984.

On November 4, 2002, the director issued a Form I-72, advising the applicant to submit a statement of earnings from the Social Security Administration for 1981 through 1987. The applicant, in response, asserted that from 1981 to 1992, he received his wages in cash as he did not have a social security number. The applicant submitted a printout from the Social Security Administration which listed his earning commencing in 1992.

The director issued a Notice of Intent Deny dated March 28, 2003, informing the applicant of inconsistencies between his testimony and the evidence in the record. Specifically, the applicant indicated that from 1981 through 1992 he did not have a social security number; however, he provided wage and tax statements for 1982 and 1983 that listed a social security number in his name. In addition, the applicant listed the same security number on his Form I-687 application, which was received by the legacy Immigration and Naturalization Service in August 1990. The director advised the applicant that attempts were made to telephonically verify the employment letter from Property Management System and the affidavit from [redacted]; however, Citizenship and Immigration Services was unable to do so as the company was no longer in business and the telephone number of [redacted] was disconnected, incorrect, unlisted, and/or invalid. The director also advised the applicant that the affidavit from [redacted] regarding the dates of employment was inconsistent with employment dates from Property Management System.

It is reasonable to conclude that affiants who had provided documents over twelve years ago are no longer available at the same telephone number or address listed as a point of contact in an affidavit or letter.

The applicant, in response, asserted in part:

> When I applied for the amnesty program, my attorney, John Mendoza advised me that I had to get as much proof as possible that I had been living in the United States since at least January 1, 1982. He said that the best proof would be proof of employment such as letters from employers, income tax returns, and W-2's.
>
> I did not have any of these things; so, I tried to track down those employers. I found a few of them and managed to obtained some proof. I was able to obtain a W-2 from the Ramada Inn where I worked in 1982 and 1983. The person who was there had blank W-2 forms from 1982 and 1983 left over from those years. He found my payroll records and typed out the W-2's for me. I gave him my social security number since I did not have one when I worked there. This was in 1991.

Regarding the inconsistent dates of employment between [redacted] and Property Management System, the applicant asserted that "the inconsistency is only one month's difference and can be attribute to my error in memory of those events which took place 22 years ago." The applicant submitted an additional document from the Social Security Administration which indicated that applicant's earnings did not go back further than 1992.

On appeal, counsel submits:

- Several unsigned rental receipts dated March 4, 1981, June 2, 1981, April 2, 1982 and September 3, 1982.
- Several receipts dated during the requisite period.
- A copy of an open-end credit contract entered into on October 3, 1981 between the applicant and Home Health Education Service in Burleson, Texas.

The statements of counsel on appeal regarding the amount and sufficiency of the applicant's evidence of residence have been considered. Furthermore, the statements of the applicant are considered to be a reasonable explanation in these circumstances.

In this instance, the applicant submitted evidence, including contemporaneous documents, which tends to corroborate his claim of residence in the United States during the requisite period. The district director has not established that the information in this evidence was inconsistent with the claims made on the application, or that it was false information. As stated in *Matter of E--M--*, *supra*, when something is to be established by a preponderance of evidence, the applicant only has to establish that the asserted claim is probably true. That decision also points out that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. The documents that have been furnished may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

The documentation provided by the applicant supports by a preponderance of the evidence that the applicant satisfies the statutory and regulatory criteria of entry into the United States before January 1, 1982, as well as continuous unlawful residence in the country during the ensuing time frame of January 1, 1982 through May 4, 1988, as required for eligibility for legalization under section 1104(c)(2)(B)(i) of the LIFE Act.

Accordingly, the applicant's appeal will be sustained. The district director shall continue the adjudication of the application for permanent resident status.

ORDER: The appeal is sustained.