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

PUBLIC COPY

U.S. Citizenship and Immigration Services

L 2

[redacted]

FILE: [redacted] Office: LAS VEGAS Date: APR 29 2008

MSC 02 214 62103

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: 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, Las Vegas, Nevada, and is now on appeal before the Administrative Appeals Office (AAO). 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, the applicant submits a letter and additional documentation.

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 district 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.

The regulations at 8 C.F.R. § 245a.2(d)(3) provide an illustrative list of contemporaneous documents that an applicant may submit. While affidavits "may" be accepted (as "other relevant documentation') [*See* 8 C.F.R. § 245a.2(d)(3)(vi)(L)] in support of the applicant's claim, the regulations do not suggest that such evidence alone is necessarily sufficient to establish the applicant's unlawful continuous residence during the requisite time period.

While there is no specific regulation that governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements that affidavits are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information that an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to. *See* 8 C.F.R. § 245a.2(d)(3)(v).

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 applicant filed his Form I-485, Application to Register Permanent Resident or Adjust Status, under the LIFE Act on May 2, 2002. In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant has provided the following evidence throughout the application process:

1. A letter, dated April 18, 1991, from [redacted]z of Anaheim, California, stating that he met the applicant in January 1981, and that they have been friends ever since; and a notarized form-letter affidavit, dated April 29, 1991, from Mr. [redacted] stating that the applicant lived with him in Santa Ana, California, from January 1, 1980, to June 30, 1986.

2. A notarized form-letter affidavit, dated May 1, 1991, from [redacted] of Anaheim, California, stating that the applicant lived with him in Anaheim from September 1, 1987, to September 30, 1990.

3. A letter, dated April 18, 1991, from [redacted], owner of [redacted] & Company Real Estate Appraisers, Fullerton, California, stating that the applicant had been a tenant at his apartment in Anaheim, California, from July 1986, to August 1987.

4. A letter, dated March 25, 1991, from [redacted], personnel clerk at TlaquePaque Restaurant, Placentia, California, stating that the applicant was employed as an assistant bartender and head bartender, from July 7, 1980, to 1986, and again from November 5, 1987, to August 10, 1990. A second letter, dated October 10, 2003, from [redacted] identifies herself as the general manager of the restaurant, and reiterates the information provided in the March 25, 1991 letter. A third letter, dated February 24, 2006, from [redacted] states that she has known the applicant since 1980 when he worked for her family's establishment, but the business is no longer in existence.

5. A letter, dated April 4, 1991, from El Torito Restaurants, Inc., stating that the applicant was employed in Pacentia, California, from May 16, 1986, to September 5, 1987.

6. A notarized form-letter affidavit, dated December 27, 1995, from [redacted] of Corona, California, stating that he is the owner of two bar establishments and met the applicant when he was helping bartenders. Mr. [redacted] asserts that he has personal knowledge that the applicant has resided in the United States since 1980 except for a trip to Mexico.

On January 27, 2006, the district director issued a Notice of Intent to Deny (NOID), stating that the applicant had provided "vague affidavits without details that would convince the Service of continuous residence in the United States." The applicant was provided 30 days in which to submit a rebuttal to the NOID.

The district director denied the application on March 7, 2006, after concluding that the only evidence provided to establish the applicant's residence in the United States prior to 1988 consisted of unsupported affidavits or questionable documents. The district director also noted that there were inconsistencies in the applicant's testimony at interviews - on October 2, 2003, and November 25, 2003 – and the documentation provided. Specifically, the district director noted that it was not credible that the applicant worked as an assistant bartender, because he was only 15 years old in 1980. The district director also noted that the applicant had stated at interview that he had left the United States in 1988 and 1989 for short trips to Mexico to attend the births of his sons, but that he did not account for the children's conceptions, or the birth of another child in Mexico in 1985.

On appeal, the applicant submits photocopies of three of his children's birth certificates showing that his son [redacted]' was born in Mexico on May 31, 1988, and his son '[redacted]" and daughter [redacted]' were born in California on February 1, 1986, and November 17, 1990, respectively. The applicant had also previously indicated on his Form I-485, that he had a son "[redacted]' born in Mexico

on April 29, 1989. Therefore, it appears that the applicant's short trips to Mexico in 1988 and 1999 related to the births of [redacted] and [redacted] Furthermore, the "birth of another child in Mexico in 1985," as noted by the director, appears to relate to [redacted] The Form I-485 indicates that [redacted] was born in California on February 2, 1985, but the birth certificate submitted on appeal shows his date of birth as February 1, 1986.

On appeal, the applicant also submits a letter stating that "assistant bartender" was just a title to get paid, and that he was essentially carrying ice to the bar, cleaning, and helping out because his father was working at the restaurant as a singer, and that this is how he learned to mix drinks and later work as a bartender.

While the inconsistencies noted by the director in his decision to deny the application have been partially explained regarding the applicant's short trips to Mexico in 1988 and 1989, the applicant did not provide an explanation as to the conception dates/locations, and/or whereabouts of his spouse during the time period from 1984 through 1990. Furthermore, the documentation submitted by the applicant in support of his application (Nos. 1 through 6, above) is lacking.

While not required, the affidavits and letters provided (Nos. 1, 2, 3, and 6) are not accompanied by proof of identification or any evidence that the affiants actually resided in the United States during the relevant period. They also lack details that would lend credibility to the claimed relationships with the applicant and are not supported by any corroborative evidence. As such, the statements can be afforded minimal weight as evidence of the applicant's residence and presence in the United States for the requisite period.

Similarly, the employment letters from Ms. [redacted] (No. 4) and El Torito Restaurants, Inc. (No. 5) fail to meet certain regulatory requirements, identified above, set forth under 8 C.F.R. § 245a.2(d)(3)(i). As such, they also carry little evidentiary weight.

The regulation at 8 C.F.R. § 245a.12(e) provides that "[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods." Preponderance of the evidence is defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5th ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

Given the above-noted insufficiencies in the evidence provided, the AAO determines 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 since that time through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b).

It is noted that the record reveals that the applicant was arrested in Anaheim, California, on January 9, 1986, and charged with "Petty Theft" and "Theft Personal Property." The final court dispositions of these arrests are not contained in the record. The record also reveals that a warrant was filed in Orange County, California, on March 9, 2000, charging the applicant with a violation of section 10980(c)(2) of the Welfare and Institutions Code (Aid by Misrepresentation - Over $400). That case was dismissed on July 21, 2004 (Case No. [redacted]). In any future proceedings, the applicant must submit evidence of the final court disposition of his 1986 arrests and any other charges against him.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.