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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: DALLAS Date: JUL 11 2008

MSC 02 157 60100

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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 on appeal. The appeal will be dismissed

The district director denied the application because the applicant failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status from then through May 4, 1988.

On appeal, the applicant submits a letter.

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 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 district director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the district director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner 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 district director can articulate a material doubt, it is appropriate for the district director to either request additional evidence, or if that doubt leads the district director to believe that the claim is probably not true, deny the application or petition.

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).

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)(v), 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.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i), 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 regulation further allows that if official company records are unavailable, an affidavit form letter stating that the alien's employment records are unavailable and explaining why such records are unavailable may be submitted in lieu of meeting the requirements at (E) and (F) above.

Nevertheless, an affidavit not meeting all the foregoing requirements may still merit consideration as "any other relevant document" pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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

1. Several fill-in-the blank affidavits, dated September 23, 1991, from (a) [redacted] of Houston, Texas, stating that she met the applicant through her husband, and that she has personal knowledge that the applicant resided in Houston, Texas, since 1982; (b) [redacted] of South Houston, Texas, stating that he met the applicant through a friend at work, and that he has personal knowledge that the applicant resided in Houston, Texas, since 1981; (c) [redacted] of Pasadena, Texas, stating that he met the applicant through a cousin, and that he has personal knowledge that the applicant resided in Houston, Texas, since 1982; and, (d) [redacted] of South Houston, Texas, stating that the applicant is her cousin, and that she has personal knowledge that the applicant resided in Houston, Texas, since 1978. The affiants are generally vague as to how they date their acquaintances with the applicant, how often and under what circumstances they

had contact with him during the requisite period, and lack details that would lend credibility to their claims.

2. An employment affidavit, dated September 23, 1991, from [redacted] of Houston, Texas, stating that the applicant had been employed by him as a laborer since May 1981. As an "employment letter," the affidavit does not comply with the regulations set forth in 8 C.F.R. § 245a.2(d)(3)(i), as described above. This affidavit suffers from the same deficiencies as the affidavits described in No. 1, above.

3. An affidavit, dated January 24, 2002, from of Dallas County, Texas, stating that he has known the applicant since 1987. This affidavit also suffers from the same deficiencies as the affidavits described in Nos. 1 and 2, above.

4. An affidavit, dated January 6, 2004, from [redacted] of Pasadena, Texas, stating that he is the applicant's cousin, they have a close relationship, see each other every six months, talk by phone one or two times a week, and that he and the applicant used to live together from January 1982 to May 1988 (at an unspecified address). In support of the affidavit, [redacted] provides a photocopy of his Texas Driver's License indicating his address as the same as the applicant's current address: [redacted], Dallas, Texas 75227.

In a Notice of Intent to Deny (NOID), dated January 15, 2004, the district director determined that the applicant had failed to submit sufficient evidence demonstrating his continuous unlawful residence in the United States from prior to January 1, 1982, through May 4, 1988. In a Notice of Decision (NOD), dated March 24, 2004, the district director denied the application based on the reasons stated in the NOID.

On appeal, the applicant indicates that he can not provide copies of checks, mortgage receipts, etc. because, due to his illegal status and lack of proper identification, he could not rent a house, buy a car, etc.

The issue in the proceeding is whether the applicant has submitted sufficient evidence to establish that he entered the United States before January 1, 1982, and resided in a continuous unlawful status from then through May 4, 1988.

Although the applicant has submitted affidavits in support of his application, he has provided no contemporaneous evidence of residence in the United States during any of the requisite time period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality.

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).

The absence of any corroborative documentation to support the applicant's claim of continuous residence during the requisite period detracts from the credibility of his claim. 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. Given the applicant's reliance solely upon third-party affidavits which lack details, 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). Thus, 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.