U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: PHOENIX Date: JUL 22 2008

MSC 02 142 62300

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, Phoenix, Arizona, 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 statement.

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 director has some doubt as to the truth, if the petitioner 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 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 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 or petition.

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.

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 Residence or Adjust Status, under the LIFE Act on February 19, 2002.

A review of the record reveals that the applicant provided the following evidence throughout the application process in an attempt to establish his continuous unlawful residence from before January 1, 1982, through May 4, 1988:

1. Affidavits, notarized on January 7, 1991, from [redacted], stating that he employed the applicant in installation duties at a wage of $500.00 per month from January 1981 through October 1985 (and that the applicant had not been laid off during his employment), and that the applicant resided in Bell, California, from December 1981 through August 1987. The applicant also provided evidence that Mr. [redacted] died in February 2003.

2. An affidavit, dated January 7, 1991, from [redacted], stating that the applicant is a family friend and that the applicant resided in Bell, California from December 1981 to September 1987, and in Los Angeles, California from September 1987 to November 1989.

3. An affidavit, dated January 7, 1991, from [redacted], stating that the applicant, her brother-in-law, told her that he took a trip to Mexico from August to September 1987.

4. An affidavit, dated January 7, 1991, from [redacted], stating that the applicant resided in Los Angeles, California, from September 1987 through May 1989.

5. An affidavit, dated January 7, 1991, from [redacted], stating that the applicant resided in Los Angeles, California, from September 1987 through May 1989.

6. An affidavit, dated February 9, 2002, from [redacted], stating that she has met the applicant through family members in church in or about December 1981 and that have been friends since. Ms. [redacted] further states that the applicant resided in Bell, California

from December 1981 through May 1989. In an un-notarized declaration, dated July 10, 2006, Ms. [redacted] states that she met the applicant in December 1981, didn't see him for a while, saw him again in February 1983, and later saw him at church.

7. An un-notarized declaration, dated July 10, 2006, from [redacted] and [redacted], stating that she met the applicant at [redacted] where she worked as a waitress – and that she saw him frequently from 1981 to 1982, and off-and-on from 1982 until the early 1990's.

In a Notice of Intent to Deny (NOID), dated June 28, 2006, 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 September 27, 2006, the district director denied the application based on the reasons stated in the NOID.

On appeal, the applicant asserts that he has provided sufficient declarations proving his entry and continuous presence from January 1982 through May 5, 1988 - that since he was a teenager in 1982, it would seem reasonable that he would have little, if any, documentation for this time period due to his age, and that he has to rely on witnesses to establish his presence. He states that he feels Citizenship and Immigration Services (CIS) has mischaracterized and discredited the evidence provided, and asks that his application be justly and fairly considered.

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.

In summary, the applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), and no hospital or medical records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv). The applicant also has not provided documentation (including, for example, money order receipts, passport entries, children's birth certificates, bank book transactions, letters of correspondence, a Social Security card, or automobile, contract, and insurance documentation) according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (I) and (K). The documentation provided by the applicant consists solely of third-party affidavits ("other relevant documentation"). These documents lack specific details as to how the affiants knew the applicant – how often and under what circumstances they had contact with the applicant – during the requisite time period from 1982 through 1988.

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 - all of 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.