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

U.S. Citizenship and Immigration Services

PUBLIC COPY

L 2

FILE: [redacted] Office: DALLAS Date: JUN 03 2006

MSC 02 165 60253

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. 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 District Director, Dallas, Texas, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application, finding that while the record contained evidence of the applicant's presence beginning in 1984, the applicant failed to establish that he entered the United States before January 1, 1982, and resided continuously in the United States in unlawful status from that date through 1984.

On appeal, counsel for the applicant asserts that the applicant submitted credible and verifiable evidence that he was continuously and physically present in the United States since before January 1982 through May 4, 1988. Counsel asserts that the affidavits and employment letters establish this by a preponderance of the evidence.

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 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 or 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).

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 record reflects than on March 14, 2002, the applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status. On December 16, 2002, the applicant appeared for an interview based on his application. The interviewing officer issued the applicant a Request for Evidence (RFE), requesting that the applicant submit a certified court disposition for a DWI arrest by the Dallas Police Department on July 8, 1989. In response, the applicant submitted a certified court disposition indicating that the charge was dismissed.

On July 19, 2004, the director sent the applicant a Notice of Intent to Deny (NOID) the application, stating that the record contained evidence of the applicant's presence beginning in 1984, but that the applicant had failed to establish that he entered the United States before January 1, 1982, and resided continuously in the United States in unlawful status from that date through 1984. The director informed the applicant that he had 30 days from the receipt of the NOID to submit any information the applicant felt was relevant to his case. In response, the applicant submitted previously submitted documents, including several residential leases and affidavits.

On June 21, 2006, the director denied the application, finding that the applicant failed to overcome the grounds for denial as stated in the NOID.

On appeal, counsel for the applicant asserts that the applicant submitted credible and verifiable evidence that he was continuously and physically present in the United States since before January 1982 through May 4, 1988. Counsel asserts that the affidavits and employment letters establish this by a preponderance of the evidence.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish his entry into the United States before January 1, 1982, his continuous residence from

January 1, 1982, through May 4, 1988, and his continuous physical presence in the United States during the requisite period.

The record of proceeding contains the following evidence relating to the period in question:

Employment Letters

- A fill-in-the-blank affidavit, notarized on June 19, 1990, from [redacted] stated that he owned a business called Harvesting and that he employed the applicant, who performed harvesting duties, from May 1981 through October 1984.

This affidavit can be given little evidentiary weight as it lacks sufficient detail under the regulations. Specifically, the employers failed to provide the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulation, Mr. [redacted] also failed to declare whether the information about dates of employment was taken from company records, and to identify the location of such company records, and to state whether such records are accessible, or, in the alternative state the reason why such records are unavailable. *See* 8 C.F.R. § 245a.2(d)(3)(i). [redacted] also did not identify any periods of layoff and or list the applicant's duties with the business in any detail. *Id.*

Letters and Affidavits

- A notarized letter dated February 17, 2002, from [redacted], the applicant's friend. Mr[redacted] states, in relevant part, that he has known the applicant since 1980 and, that at the time the letter was written, the applicant was living at [redacted], Irving, Texas;

- A notarized letter dated February 16, 2002, from [redacted], the applicant's friend. [redacted] states, in relevant part, that he has known the applicant since January 23, 1982. He states that since the time they were introduced to each other by another friend, they have seen each other almost every weekend and that their children are friends;

- A notarized letter dated February 16, 2002, from [redacted] the applicant's friend. [redacted] states, in relevant part, that he has personally known the applicant since May 1981. He states that the applicant has always been a good friend with good manners;

- A notarized letter dated February 21, 2002, from [redacted] the applicant's friend. [redacted] states, in relevant part, that he has known the applicant since 1983 and that the applicant now resides at [redacted], Irving, Texas;

- A notarized letter dated February 18, 2002, from [redacted] the applicant's friend. states, in relevant part, that he has known the applicant since March 1983. He states that the applicant is very honest, responsible, and hardworking;

- A notarized letter dated February 19, 2002, from [redacted] the applicant's friend. Mr. [redacted] states, in relevant part, that he has known the applicant since 1983. He states that the applicant now resides at [redacted] Irving, Texas;

- A notarized letter dated February 18, 2002, from [redacted] the applicant's friend. states, in relevant part, that he has known the applicant since October 1984. He states that the applicant is very honest, responsible, and hardworking;

- A notarized letter dated February 22, 2002, from [redacted] the applicant's friend. states, in relevant part, that he has known the applicant since 1984. He states that he met the applicant through a brother-in-law of his. He states that he and the applicant became friends, have remained friends, and that they get together every once in a while; and,

- A fill-in-the-blank affidavit notarized on June 25, 1990, from [redacted] lo states that, at the time the affidavit was notarized, the applicant resided at [redacted] Irving, Texas. He states that the applicant lived with him at the above mentioned address from May 1981 to October 1984.

These affidavits are of little probative value and can be given little evidentiary weight, as they are not sufficiently detailed. Mr [redacted] did not provide any details about the three-year time period he lived with the applicant. Mr. [redacted] states that he was introduced to the applicant by a brother-in-law, but does not describe the place or circumstances under which they met. None of the other affiants provide the address where the applicant was living when they first met him. They provide the period they have known the applicant, but do not describe the place or circumstances under which they met the applicant. They do not state whether they met the applicant in the United States or elsewhere. The do not state when they or the applicant began continuously residing in the United States.

Although the applicant has submitted numerous affidavits in support of his application, he has not provided any contemporaneous evidence of residence in the United States during the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period.

The record of proceedings contains various other documents, including a letter dated May 2, 1988, from [redacted] verifying that the applicant worked there from April 1, 1985 to May 15, 1988, a letter dated February 25, 2002, from [redacted] stating that the applicant had worked for the company since March 19, 1992, and proof of vehicle registration from July 1989. None of this evidence addresses the applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through 1984.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he states that he last entered the United States in May 1981, near El Paso, Texas, and resided for the duration of the requisite period in Texas. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has failed to do so.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, 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.