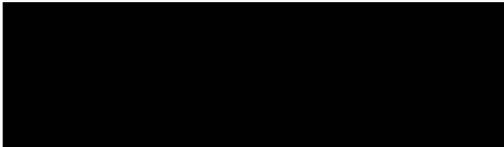


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Services

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FILE:



MSC 01 363 62593

Office: HOUSTON

Date:

NOV 28 2006

IN RE:

Applicant:



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. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 (AAO) on appeal. The appeal will be dismissed.

The regulation at 8 C.F.R. § 103.3(a)(1)(iii) states, in pertinent part:

(B) *Meaning of affected party.* For purposes of this section and §§ 103.4 and 103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition.

Although the record contains a Form G-28, Notice of Entry of Appearance as Attorney or Representative, authorizing [REDACTED] to act on behalf of the applicant, [REDACTED] no longer authorized to represent the applicant pursuant to 8 C.F.R. § 292.1(a).<sup>1</sup> As such, the decision will be furnished only to the applicant.

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 asserts that documentation was submitted in response to the Notice of Intent to Deny.

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.

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<sup>1</sup> See <http://www.usdoj.gov/eoir/profcond/chart.htm>

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).

Here, the submitted evidence is not relevant, probative, and credible. In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant only provided the following:

- An affidavit notarized January 3, 1996 from [REDACTED] of Houston, Texas, who indicated that he has been acquainted with the applicant since January 1, 1982, and attested to the applicant's residences in Houston Texas since October 30, 1981.
- An undated statement from [REDACTED] of Houston, Texas, who indicated that she has known the applicant for approximately ten years and attested to the applicant's 1987 departure from the United States to Mexico. [REDACTED] asserted that she has remained acquainted with the applicant since their first meeting.

On October 28, 2002, a Form I-72 was issued which requested that the applicant submit original and notarized affidavits as well as proof of identity for each affiant. On March 31, 2003, the director issued a Notice of Intent to Deny, advising the applicant that he had failed to meet his burden of proof due to the lack of evidence and credibility of the documentation provided. The applicant was also informed of his failure to comply with the Form I-72. The applicant, in response, submitted:

- An affidavit notarized January 11, 2003 from [REDACTED] of Missouri City, Texas, who indicated that he met the applicant in 1986 while playing soccer at the Houston Soccer League. [REDACTED] asserted that he was a co-worker of the applicant at "Food Arama" for approximately 13 years and has remained in contact with the applicant since that time.
- An affidavit notarized January 28, 2003 from [REDACTED] who indicated that she has been acquainted with the applicant for approximately 18 years.

Is it noted that on June 5, 2003, [REDACTED] was contacted by Citizenship and Immigration Services [REDACTED] stated that she has been a co-worker of the applicant at Foodarama since 1990 or 1991.

- An affidavit notarized January 23, 2003 from [REDACTED] of Houston, Texas, who indicated that he first met the applicant at his home in April 1984 and "reunite for all occasions" since that time.
- An affidavit notarized January 23, 2003 from [REDACTED] of Missouri City, Texas, who indicated that she first met the applicant at work in October 1986 and "reunite for all occasions" since that time.
- An affidavit notarized January 28, 2003 from [REDACTED] who indicated that she has been acquainted with the applicant for approximately 15 years.
- An undated statement from [REDACTED] of Rosharon, Texas, who indicated that she has known the applicant for ten years and that she is a co-worker of the applicant "at our recent jobs."

The AAO does not view the affidavits discussed above as substantive enough to support a finding that the applicant entered and began residing in the United States before January 1, 1982. Specifically:

1. [REDACTED] indicates that he has been acquainted with the applicant since January 1, 1982, but provides no detail regarding the nature or origin of their relationships with the applicant or the basis for their continuing awareness of the applicant's residence. Except for [REDACTED] affidavit, the record contains no other material to support the applicant's claim that he entered the United States prior to January 1, 1982.
2. The affidavits from [REDACTED] and [REDACTED] serve only to establish the applicant's residence in the United States since April 1984 and 1986, respectively.
3. The affidavit from [REDACTED] raises questions of credibility as she claims that she met the applicant in "October 1986 at work." The applicant, however, claimed on his Form I-687 application that he was self-employed during this time period.

The remaining affidavits are irrelevant as they attest to the applicant's residence in the United States subsequent to the period in question.

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 (5<sup>th</sup> ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991). Given the virtual absence of contemporaneous documentation and the insufficiency of the affidavits provided by the applicant, it is determined that the applicant has not met her 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 from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b).

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