

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

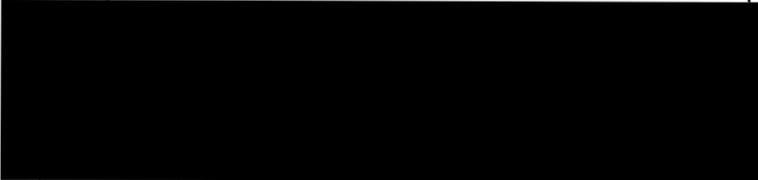
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

L2

PUBLIC COPY



FILE:

MSC 01 324 60362

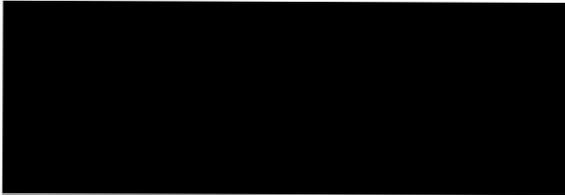
Office: DALLAS

Date:

OCT 05 2006

IN RE:

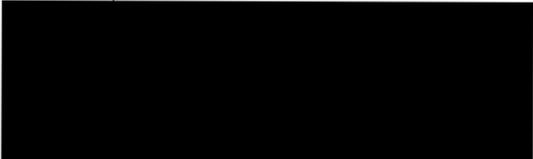
Applicant:



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:



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.

Robert P. Wienmann, 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 director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988.

On appeal, counsel states that the affidavits submitted by the applicant, together with his own detailed statement, provides sufficient evidence to establish that he is eligible for benefits under the LIFE Act.

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. Section 1104(c)(2)(B) of the LIFE Act; 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 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.

Although Citizenship and Immigration Services (CIS) 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

On a questionnaire to determine class membership, which he signed under penalty of perjury on July 20, 1990, the applicant stated that he first entered the United States in November 1981. On his Form I-687, Application for Status as a Temporary Resident, the applicant stated that his only absences during the qualifying period were in February 1984 and August 1987.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant submitted the following evidence:

1. A July 5, 1990 sworn statement from [REDACTED] in which he stated that he has known the applicant since 1981. Mr. [REDACTED] did not indicate where or under what circumstances he has known the applicant, and did not indicate that the applicant was present and living in the United States during the qualifying period.
2. A June 23, 1990 sworn statement from [REDACTED] in which he stated that he has known the applicant since 1981. Mr. [REDACTED] did not indicate where or under what circumstances he has known the applicant, and did not indicate that the applicant was present and living in the United States during the qualifying period.
3. A July 13, 1990 sworn affidavit from [REDACTED] in which he stated that he is friends with the applicant and can attest that he lived at [REDACTED] from November 1981 until December 1986. [REDACTED] indicated that the address was also his own.
4. A June 30, 1999 sworn "Employment Affidavit" signed by [REDACTED] in which he stated that the applicant worked for him "cleaning cars and detail" from January 1982 until November 1986. Mr. [REDACTED] stated that his business was [REDACTED] Motors and that no official records of employment were maintained. [REDACTED] did not indicate the source of the information that he used to determine the applicant's employment dates or the applicant's address at the time of his employment. 8 C.F.R. § 245a.2(d)(3)(i).
5. A July 10, 1990 sworn statement from [REDACTED] in which he stated that the applicant was employed by his company from January 1987 until December 1988. Although Mr. [REDACTED] stated that other companies contracted his company to perform work, he did not indicate the name of his business. He stated that the applicant was employed as a building maintenance man at the rate of \$4.50 per hour. Mr. [REDACTED] did not indicate whether or not the information regarding the applicant's work was taken from official company records and did not provide the applicant's address at the time of his employment. *Id.*
6. A July 10, 1990 sworn affidavit from [REDACTED] in which he stated that he was the applicant's landlord at [REDACTED] where the applicant lived from January 1987 until the date of the affidavit. Mr. [REDACTED] indicated that he also lived at that address and that the applicant "paid rent to me on a monthly basis with paid bills." The applicant submitted no documentary evidence, such as a lease, rental agreement, or similar documentation to reflect that he lived at the address as stated. Further, the applicant submitted no evidence that Mr. [REDACTED] lived at the address during the time stated.

In response to the director's request for evidence dated May 23, 2002, the applicant also submitted the following:

7. A July 14, 2002 sworn statement from [REDACTED] in which she stated that she has known the applicant since 1979, when he "came from Mexico." The applicant submitted no evidence that Ms. [REDACTED] was present and living in the United States during that time period. Further, this statement conflicts with information provided by the applicant on his questionnaire to determine class membership, in which he stated that he first entered the United States in November 1981. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

8. A July 8, 2002 notarized letter from [REDACTED] in which he stated that he has known the applicant for "almost 20 years" and that they met "in the early 1980's" when Mr. [REDACTED] attended college in Commerce, Texas and the applicant lived in Richardson, Texas.

The applicant also submitted a July 3, 2002 affidavit in response to the request for evidence in which he stated that he first entered the United States in 1979 for the purpose of trying to find Ms. [REDACTED] who was his mother's friend. The applicant claimed that he lived with Ms. [REDACTED] and her family for a year before moving to Fort Worth. As noted above, this conflicts with the applicant's earlier statements that he first entered the United States in November 1981. *Id.* Further, Ms. [REDACTED] did not indicate in her statement that the applicant had lived with her at any time. The applicant submitted no contemporaneous evidence that he lived and worked in the United States at any time during the required period.

In this instance, the applicant has submitted eight affidavits and third-party statements attesting to his continuous residence in the U.S. during the period in question. Contrary to counsel's assertion on appeal, the applicant submitted no additional documentary evidence to establish his continuous unlawful residency in the United States during the requisite period. While affidavits in certain cases can effectively meet the preponderance of evidence standard, the applicant's affidavits are all from friends or other close acquaintances. The applicant submitted no objective and independent evidence or any contemporaneous evidence of his presence and residency in the United States. Further, the applicant provided contradictory evidence of his initial arrival in the United States.

Given the absence of any contemporaneous documentation, along with the contradictory statements in the record, it is concluded that the applicant has failed to establish continuous residence in the U.S. for the required period.

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