

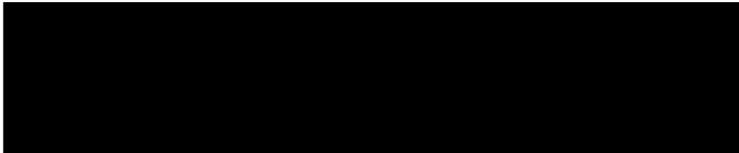


U.S. Citizenship
and Immigration
Services

PUBLIC COPY

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

W2



FILE: [Redacted]
MSC 02 046 60662

Office: LOS ANGELES

Date: FEB 06 2007

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:



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. 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, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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, counsel asserts that the applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel provides additional documents in support of the appeal.

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.

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 provided the following evidence throughout the application process:

- An undated letter from [REDACTED], pastor of Saint Boniface Catholic Church in Anaheim, California, who indicated that he has known the applicant for two years and that the

applicant has been a registered parishioner since December 1981. [REDACTED] attested to the applicant's Anaheim residences at [REDACTED] from December 1981 to January 1987; at [REDACTED] from January 1987 to September 1987; and at [REDACTED] from September 1987 to August 1989.

- An affidavit notarized October 1, 1990 from [REDACTED] of Anaheim, California, who indicated that she met the applicant in church on December 12, 1981. [REDACTED] asserted that the applicant has been residing in her Anaheim homes at [REDACTED] from December 1981 to January 1987; at [REDACTED] from January 1987 to September 1987; and at [REDACTED] from September 1987 to August 1989.
- An additional affidavit notarized October 19, 1990 from [REDACTED] who indicated that the applicant resided with her from October 5, 1987 to September 10, 1990.
- An affidavit notarized September 28, 1990 from [REDACTED] of Anaheim, California, who indicated that he met the applicant "when we work here in St. Boniface Jan. 1987" and he has remain friends with the applicant since that time. [REDACTED] attested to the applicant's Anaheim residences from December 1981 to January 1987 at [REDACTED]; from January 1987 to September 1987 at [REDACTED]; and from September 1987 to August 1989 at [REDACTED]
- An additional affidavit notarized October 15, 1990 from [REDACTED], who indicated that the applicant resided with him from October 5, 1987 to August 1989.
- An additional affidavit notarized April 18, 2001 from [REDACTED] who indicated that he has personally known the applicant since October 1987 and that the applicant resided with him from October 5, 1987 to August 1990.
- An undated letter from [REDACTED] who indicated that the applicant was employed in the capacity of yard maintenance on Saturdays and Sundays since December 1, 1981.
- An affidavit notarized September 21, 1988 from [REDACTED] of Anaheim, California, who indicated that the applicant has been residing with him at [REDACTED] from May 1981 to December 1987.
- An additional affidavit notarized September 13, 2001 from [REDACTED], who reaffirmed his statement that the applicant had been resided with him in Anaheim, California at [REDACTED] from May 1981 to December 1987.
- An affidavit notarized October 16, 1990 from an affiant (name is indecipherable), who indicated that the applicant resided with her/him from January 1987 to September 1987.
- An envelope postmarked December 30, 1987 from the applicant listing his address as [REDACTED] Anaheim, California.
- An affidavit notarized April 18, 2001 from [REDACTED] of Anaheim, California, who indicated that he met the applicant in 1986 "working for St. Boniface Church" and has remained

good friends with the applicant since that time. [REDACTED] attested to the applicant's residence in Anaheim from March 1986 to June 1990.

- A letter dated April 17, 2001 from [REDACTED], pastor of Saint Boniface Catholic Church in Anaheim, California, who indicated that the applicant has been employed in the capacity of maintenance at the church from February 25, 1988 to November 1990. [REDACTED] indicated that the applicant resided at [REDACTED], Anaheim, California during his employment with the church.
- An affidavit notarized August 26, 2001 from an acquaintance, [REDACTED] of Santa Ana, California, who indicated that he visited the applicant continuously and attested to the applicant's Anaheim residences from March 1984 to January 1987 at [REDACTED] from January 1987 to September 1987 at [REDACTED]; and from September 1987 to August 1989 at [REDACTED]
- An affidavit notarized September 29, 2001 from an acquaintance, [REDACTED] of La Habra, California, who indicated that she met the applicant through a friend and has remained friends with him since that time. [REDACTED] attested to the applicant's Anaheim residence from March 1983 to January 1987 at [REDACTED]; from January 1987 to September 1987 at [REDACTED]; and from September 1987 to August 1989 at [REDACTED]
- An affidavit notarized April 27, 2001 from [REDACTED] who indicated that he met the applicant on January 1, 1982 and "have met him through his working at St. Boniface Church."

On October 29, 2004, the director issued a Notice of Intent to Deny, advising the applicant of inconsistencies between his applications, oral testimony and evidence. Specifically, at the time of his LIFE interview, the applicant informed the interviewing officer that he first worked in 1981 for a gardener for about a year and a half, and was hired by individuals by waiting outside of The Home Depot store. The applicant, however, on his Form I-687 application asserted that he was employed by Ambrosio Aguirre from 1981 through October 1990 and the only other employment claimed on his Form I-687 application was at Saint Boniface Church commencing in 1988. The applicant, however, failed to respond to the notice.

On appeal, the applicant asserts that it is difficult to provide additional evidence because all his friends have relocated and he did not have a social security number during the requisite period. The applicant states, in part:

On the day of the interview I erroneously stated that I first worked for a year and a half as a gardener beginning 1981, an [sic] after that I stated that I waited outside Home Depot and wait for people to hire me. Please take in consideration that I was very nervous at the time of the interview and mistake [sic] fully misplace that dates of such events. When I first came to the United States I work for [REDACTED] as a gardener working only Saturdays and Sundays and during the weekdays (Mon. to Fri) I went outside of Home Depot for a [sic] opportunity to work more days and earn a higher income to support my family in Mexico. ... I don't have evidence that I work outside of Home Depot because the payment was in cash and I did not keep records of the people that hire me. Furthermore, I did not mentioned that I work outsider [sic] of Home Depot because I did not had [sic] any employment verification letter and as you can see it is difficult to provide evidence I never had.

On appeal, counsel submits an American Express Travelers Cheques issued on December 20, 1984 and a receipt from American Express dated October 13, 1981. These documents have no evidentiary weight or probative value as the applicant's name is not listed.

The applicant's statement on appeal has been considered; however, the AAO does not view the affidavits discussed above as the applicant has presented contradictory and inconsistent documents, which undermines his credibility. Specifically:

1. [REDACTED] claims to have employed the applicant as a gardener from December 1, 1981, but did not provide the name and address of the company the applicant allegedly worked and the applicant's address during the period in question. In addition, [REDACTED] failed to provide his own telephone number or address and, therefore, his affidavit is not amenable to verification by the Citizenship and Immigration Services.
2. [REDACTED] and [REDACTED] attested to the applicant's residence at [REDACTED] Anaheim, California from December 1981 to January 1987. However, the applicant, on his Form I-687 application, did not claim to have resided at this address during the requisite period.
3. [REDACTED] attested to the applicant's employment at Saint Boniface Church from February 25, 1988. However, [REDACTED] indicated that the applicant's employment at Saint Boniface Church commenced on July 25, 1988.
4. [REDACTED] attested to the applicant's address during his employment at Saint Boniface Church as [REDACTED] Anaheim, California. The applicant, on his Form I-687 application, did not claim residence at this address until August 1989.
5. [REDACTED] asserted that he met the applicant "when we work here in St. Boniface January 1987." The applicant, on his Form I-687 application, did not claim employment at Saint Boniface Church until July 1988. In addition, [REDACTED], in his first affidavit, indicated that he first met the applicant in January 1987 and the applicant resided with him from October 5, 1987 to August 1989. In his subsequent affidavit, [REDACTED] indicated that he first met the applicant in October 1987 and the applicant resided with him from that date until August 1990. [REDACTED] did not provide an explanation for these contradictions and failed to provide the applicant's address during the period in question. Furthermore, [REDACTED] cannot attest to the applicant's residence from December 1981 to December 1987 as he did not meet the applicant until 1987.
6. [REDACTED], in her initial affidavit, indicated that the applicant resided with her from December 1981 to August 1989. However, in her subsequent affidavit, the affiant only attested to the applicant's residence with her from October 5, 1987 to September 10, 1990.
7. [REDACTED] asserted that he met the applicant in 1986 when the applicant was working for Saint Boniface Church. The applicant, however, did not claim employment with Saint Boniface Church until July 25, 1988.
8. The affidavit from an affiant whose name is indecipherable indicated that the applicant resided with her/him from January 1987 to September 1987. The affiant, however, did not provide the applicant's address during the period in question.

As conflicting statements have been provided, it is reasonable to expect an explanation from each affiant in order to resolve the contradictions. However, no explanations have been provided from [REDACTED] and [REDACTED], [REDACTED] [REDACTED] and [REDACTED]. Therefore, it is determined that these documents are not plausible, credible, and consistent both internally and with the other evidence of record. Further, these factors raise questions about the authenticity of the remaining documents the applicant has presented in attempt to continuous residence in the United States prior to January 1, 1982 through May 4, 1988.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 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). Given the contradicting information, absence of a plausible explanation, 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).

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