



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



22

FILE:

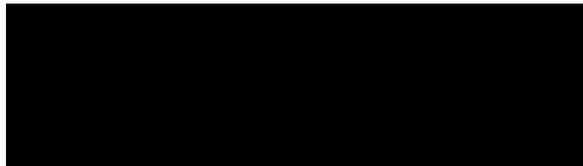
MSC 01 313 60612

Office: LOS ANGELES

Date: FEB 27 2007

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. If your appeal was sustained, of 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 application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Los Angeles, and is now before the Administrative Appeals Office 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, the applicant asserts that he had requested additional time to submit further evidence from the Social Security Administration to show he resided continuously in the United States from prior to January 1, 1982 through May 4, 1988. The applicant submits this evidence on 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).

While there is no specific regulation which governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements which affidavits are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information which an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to. See 8 C.F.R. § 245a.2(d)(3)(v).

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:

- A December 30, 2004 statement of earnings from the Social Security Administration (SSA) containing the earnings history for an individual named [REDACTED] from January 1981 through December 1983.
- A letter, handwritten in Spanish without accompanying English translation, dated November 4, 2004 from [REDACTED] stating that he has known the applicant as a friend and a coworker since before 1982 and attesting that the applicant worked at Sizzler Restaurant in 1981 and 1982.
- An affidavit dated November 28, 2002 from [REDACTED] attesting that she had personal knowledge that the applicant lived in Santa Ana, California from June 1980 to December 1983 because she was living at [REDACTED] in Santa Ana at the time and the applicant was her neighbor.
- An affidavit dated November 28, 2002 from [REDACTED] attesting that he shared a residence with the applicant at [REDACTED] in Santa Ana, California from June 1980 to December 1983.
- A letter dated May 16, 1990 from [REDACTED] Payroll Supervisor of Trans/Pacific Restaurants, Inc., stating that the applicant had been employed by the company at the Jolly Rogers Restaurant from March 14, 1989 to that date. [REDACTED] also states that the applicant worked for the company under the name [REDACTED] from May 1, 1988 to May 12, 1988.
- A letter dated March 11, 1988 from [REDACTED] Corporate Controller of Trans/Pacific Restaurants, Inc., stating that [REDACTED] was employed by the company at the Jolly Rogers

Restaurant from December 1984 to May 1985, August 1985 to March 1986, June 1986 to November 1986 and January 1987 to May 1987.

- Various pay stubs from different employers for the years 1985, 1986 and 1988 bearing the applicant's name and the names [REDACTED] and [REDACTED]
- Copies of tax returns for "[REDACTED] and [REDACTED] or [REDACTED] and [REDACTED]" for the years 1983 through 1989.
- An undated letter from [REDACTED], General Manager of a Sizzler restaurant in San Juan Capistrano, California, stating that the applicant worked as a cook at the Sizzler restaurant in Laguna Hills, California from December 1981 to February 1983.
- An undated letter from [REDACTED] stating that, as a friend and coworker, he has known the applicant since 1981.

On July 14, 2004, the director issued a Notice of Intent to Deny (NOID) stating that the applicant "furnished no documentation in support of [the applicant's] claim of residency other than affidavits/statements for the years 1981 and 1982." The director determined that the affidavits/statements [the applicant] submitted do not contain enough objective evidence to which they can be compared to determine whether the attestations are credible, plausible, or internally consistent with the record."

In response to the NOID, the applicant submitted a letter dated October 13, 2004 asserting that he worked under a different name during the "first years of 1980" and requesting additional time to obtain further evidence of his residency during the years 1981 and 1982. In additional correspondence dated November 23, 2004, the applicant submitted the letters from [REDACTED] and [REDACTED]. The applicant also indicated that he had requested an earnings statement from the SSA, which he expected to receive within several weeks.

In the decision to deny the application dated December 20, 2004, the director stated that "the information [the applicant] submitted . . . failed to overcome all the grounds for denial as stated in the NOID," and denied the application.

On appeal, the applicant asserts that he has submitted further evidence of residency for the years 1981 and 1982 as requested. He also asserts that he received the earnings statement from the SSA after the issuance of the decision. The applicant submits this statement with his appeal.

After reviewing all the evidence in the record, including the evidence presented on appeal by the applicant, the AAO determines that the submitted evidence of residency for the years 1981 and 1982 is not relevant, probative, and credible. In addition to the lack of detail (as noted by the director in the NOID) in the affidavits of [REDACTED] and [REDACTED] submitted by the applicant previously, the social security earnings statement submitted by the applicant on appeal contains information that is not

consistent with the other evidence in the record. The statement shows that the applicant earned \$96.31 from Sizzler Family Steak House of West Covina in 1983, but does not list any employment at Sizzler for the years 1981 and 1982. On his Form I-687 application, the applicant indicated that he worked at a Sizzler restaurant as a busboy from May 1990 through the date he signed the form, but did not indicate that he had worked at a Sizzler prior to 1990. Only one of the employers listed on the earnings statement is listed consistently on the applicant's Form I-687: [REDACTED]. The others—Producers Cotton Oil Company, Hood Manufacturing, South Orange County Steakhouse, [REDACTED] do not appear in the employment history included on the applicant's Form I-687. The letters submitted by the applicant on appeal lack detail and fail to meet the regulatory guidelines for third-party affidavits. In light of the inconsistencies noted above, these letters lack probative value in showing the applicant's employment during the years 1981 and 1982.

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 applicant has submitted inconsistent evidence and it is reasonable to expect him to provide an explanation resolving the inconsistency and to submit sufficient credible evidence that meets his burden of proof. The applicant submissions on appeal only raise further doubts as to the credibility of the applicant's evidence in general.

In addition, according to court documents and an FBI report based on the applicant's fingerprints, the applicant was arrested and convicted (with sentence suspended) in 1984 of violating section 647(b) of the California Penal Code, misdemeanor disorderly conduct – solicitation of prostitution. However, the applicant indicated that he had never been arrested or convicted on his Form I-485. Interview notes in the record indicate that, when questioned about his criminal record at his interview, the applicant told the interviewing officer that a friend of his was arrested and put in jail for soliciting a prostitute, but that the police let him go. In light of the conclusive evidence that the applicant was in fact arrested and convicted, the applicant's assertion lacks credibility and raises further doubts concerning the applicant's credibility in general.

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 contradictory nature and general insufficiency of evidence, 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.