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MSC 02 134 62941

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IN RE:

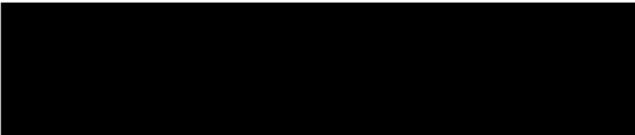
Applicant:



APPLICATION:

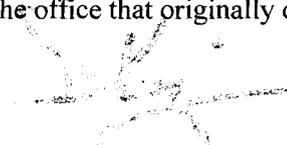
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), *amended by* Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

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. 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, the applicant asserts that he has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. The applicant provides copies of additional documents along with previously submitted 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).

At the time the applicant filed his LIFE application, he only submitted a letter dated February 15, 1989 from [REDACTED], owner of P.O.P. Ranch in Texas, who indicated that the applicant was a full-time employee from December 1981 to April 1987. The applicant duties consisted of harvesting cauliflower and wheat and taken care of the animals. [REDACTED] indicated that the applicant resided at the ranch during his employment.

The employment letter from [REDACTED] has little evidentiary weight or probative value as the affiant failed to provide a telephone number or address and, therefore, the letter is not amenable to verification by Citizenship and Immigration Services

On May 1, 2003, the applicant was issued a Form I-72, requesting that he furnish proof of his continuous presence in the United States from 1981 to 1988. The applicant, in response, asserted, in part:

That I entered this country in or about the end of January 1981. And in February 1981, I lived for about two weeks at my friend's, [REDACTED] house (see attached affidavit). Her father, [REDACTED] helped me to look for a job at [REDACTED] Ranch in Hondo, Texas

That I worked and lived with [REDACTED] s Farm since February 1981 to 1988. My occupation was to take care of the cows and to be in charge of the farm's maintenance. [REDACTED] always paid me in cash; therefore I do not have any evidence of my employment. However, I had all my mails from Mexico there, at that address. [REDACTED] had pictures, bills, etc. on my name that there was left behind when I moved to California.

That the only thing that I could do was to look for [REDACTED] to give me an affidavit, and my evidences that showed that I worked and lived at his farm during 1981 to 1988; however, [REDACTED] had already passed away, and I was not able to get to the farm in order to get anything of my record.

The applicant submitted:

- A notarized affidavit from [REDACTED] of Hondo, Texas, who attested to the applicant's residence in Hondo, Texas from February 1981 to August 2003 and to the applicant's employment with [REDACTED]. The affiant asserted that he has not seen the applicant in 14 years and nine months.
- Notarized affidavits from [REDACTED] and [REDACTED] of Hondo, Texas, who attested to the applicant's residence in Hondo, Texas from February 1981 to August 1988 and to the applicant's employment as a ranch hand for [REDACTED]. The affiants asserted that the longest period they have not seen the applicant was 14 years and nine months.
- A notarized affidavit from [REDACTED] of Hondo, Texas, who attested to the applicant's residence in Hondo, Texas from June 1981 to May 2003. [REDACTED] asserted that operated a hay hauling business and that he and the applicant hauled hay together for one summer. The affiant asserted that he has not seen the applicant in 22 years and 6 months.
- A notarized affidavit from [REDACTED] of Torrance, California, who attested to the applicant's residence in Hondo, Texas from February 1981 to August 1988 and to the applicant's employment as a ranch hand for [REDACTED]. The affiant asserted that the longest period she has not seen the applicant was 14 years and nine months.
- A notarized affidavit from [REDACTED] of Hondo, Texas, who indicated that she was a friend of the applicant's family and attested to the applicant's residence in Hondo, Texas from February 1981 to 2003. The affiant asserted that she has not seen the applicant in 22 years and 2 months.

- Several photographs of the Pope's ranch and [REDACTED] burial plot as claimed by the applicant along with a statement from [REDACTED] son of [REDACTED], who indicated that his father had passed away on August 4, 1991.

On December 13, 2004, the director issued a Notice of Intent to Deny, advising the applicant that the affidavits submitted lacked probative value as they did not contain sufficient information or corroborative documents. The applicant was also advised that the affidavits conflicted with his Form I-687 application, namely, the affiants attested to his residence in Texas from 1981 to 1988; however, on his Form I-687 application, the applicant listed his residence in Torrance (California) from 1981 to 1988. In addition, at the time of his LIFE interview, the applicant indicated that he traveled outside of the United States in 1988; however, the applicant presented an affidavit from [REDACTED] and claimed on his Form I-687 application and class membership questionnaire that he had traveled outside of the United States on June 20, 1987. Likewise, the applicant indicated on his Form I-695, Application for Employment Authorization that his last entrance into the United States was on August 20, 1981. The director noted that these inconsistencies raised doubts of credibility.

The applicant was granted 30 days in which to explain the discrepancies or rebut any adverse evidence. The applicant, however, failed to respond to the notice. Accordingly, on February 14, 2005, the director denied the application.

On appeal, the applicant asserts, in part:

I lived in Texas from 1981 to 1988.

I hired a notario to filled [sic] out my Application Status as a Temporary Resident. The notario did not read my Application to me in Spanish. I did not know they listed my address from 1981 to 1990 as Torrance. I did not live in Torrance from 1981 to 1990.

I departed the United States twice. I left once in June 1987 and once in 1988. These are my only departures. I am sorry I forgot to mention the 1987 departure. It has been a long time.

My Application for Employment Authorization lists my "last entry" as "1981". This is not correct. My last entry was 1988. I first entered the United States in January or February 1981. I apologize for any inconvenience or confusion this may have caused.

In a separate declaration the applicant asserts, in part:

The documents that the USCIS now requests are over twenty years old. It is reasonable to assume that appellants may not have easy access to documents or witnesses when so much time has passed. To require such stringent requirements on production of documents, is blatantly unfair and flies in the face of the equitable nature of LIFE. Further, due to the long lapse of time, affidavits should be favorably considered when documentation is unavailable.

Counsel, in his declaration, asserts that he represented the applicant at the time of his LIFE interview and that the last entry date "August 20, 1981" indicated on the Form I-695 was incorrect; the correct response should be 1988. Counsel asserts, "I inadvertently read Number 12 as "first entry." I apologized for any inconvenience or confusion this may have caused."

On appeal, the applicant submits an additional letter from [REDACTED] of Hondo, Texas, who reaffirmed the applicant's residence and employment at [REDACTED] Ranch during the requisite period in Hondo, Texas. The applicant also submits documentation establishing [REDACTED] residence in the United States during the period in question.

The statements of the applicant and counsel have been considered and overcome the discrepancies regarding the applicant's departure dates, last entry date, and place of residence during 1981 to 1988 cited in the director's notice. However, the AAO does not view the documents submitted as substantive enough to support a finding that the applicant entered and began residing in the United States before January 1, 1982 through May 4, 1988, as much of the content of the affidavits is inconsistent with other evidence in the record. Specifically:

1. [REDACTED] and [REDACTED] attest to the applicant's residence in Hondo, Texas from 1981 to 2003; however, the applicant indicated that he resided in Texas until 1988.
2. [REDACTED] and [REDACTED] attested to the applicant's employment with [REDACTED] from February 1981 to August 1988; however, [REDACTED] indicated that the applicant's employment ended in April 1987.

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 claimed on his Form I-687 application to have been employed from August 1987 to February 1989 with E.O.S. Construction. The applicant, however, provided no evidence to support this claim. Although item 36 of the Form I-687 application requests the applicant to list the full name and address of his employer, the applicant failed to provide an address for E. O. S. Construction. As such, the applicant's alleged employment is not amenable to verification by Citizenship and Immigration Services.

The evaluation of the applicant's claim is a factor on both the quality and quantity of the evidence provided. While affidavits in certain cases can effectively meet the preponderance of evidence standard, the affidavits submitted by the applicant are contradictory. Given the credibility issues arising from the documentation provided by the applicant, it is determined 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 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). Given this, the applicant 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.