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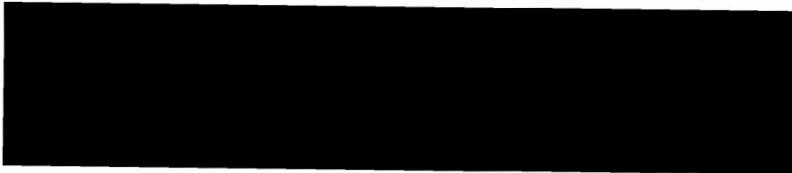
Applicant:



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 National Benefits Center. If your appeal was sustained, or 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, Dallas, Texas, 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, counsel for the applicant submits a brief and additional documentation.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. *See* section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

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 that governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements that affidavits are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information that 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).

Nevertheless, an affidavit not meeting all the foregoing requirements may still merit consideration as "any other relevant document" pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable. The regulation further allows that if official company records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and explaining why such records are unavailable may be submitted in lieu of meeting the requirements at (E) and (F) above.

A review of the record reveals that in an attempt to establish his continuous unlawful residence in the United States since before January 1, 1982 through May 4, 1988, the applicant initially provided documentation including:

- An affidavit, dated February 23, 1990, from [REDACTED] of La Azteca Bakery, Dallas, Texas, stating that the applicant was employed as a baker since April 1985. A second affidavit, dated March 15, 1990, from [REDACTED] stating that the applicant worked for the company from January 1981 through December 1984. Both affidavits gave the applicant's address as [REDACTED] Dallas, Texas.
- An affidavit, dated March 1, 1990, from [REDACTED], stating that he had known the applicant since November 1, 1982, and that the applicant resided in his home at [REDACTED] from April 1, 1985 to April 1, 1988, and at [REDACTED] from April 1, 1988 to the date of signing the affidavit. There is no city and/or state indicated for any of the addresses given.
- An affidavit, dated March 19, 1990, from [REDACTED] Dallas, Texas, stating that the applicant lived with him at [REDACTED], Dallas, Texas, from January 1981 to December 1984.

- A letter, dated March 27, 1994, from Santuario de Santa Maria de la Salud, Dallas, Texas, stating that the applicant had been a member of the church since it was first organized and has “contributed to activities.” The signature on the letter is illegible, the letter is not notarized, and does not give any indication of the date that the applicant first became a member or what activities he was involved in and how often. The letter also does not provide the applicant’s addresses during the period of his membership.
- An affidavit, dated October 6, 1994 from [REDACTED], of Dallas, Texas, stating that he had known the applicant since 1981.
- An affidavit, dated October 15, 1994, from [REDACTED], of Houston, Texas, stating that she had been a friend of the applicant since January 1981 and they visited frequently at her home. A second affidavit, also dated October 15, 1994, from Ms. [REDACTED], stating that the applicant went to Mexico to visit his family from July 1, 1987 to August 1, 1987.
- A notarized letter, dated October 11, 1994, from [REDACTED] of Dallas, Texas, stating that she had known the applicant since an unspecified date in 1982 and met him at La Azteca Bakery where she was a client.
- A notarized letter, dated December 5, 1994, from [REDACTED] Dallas, Texas, stating that he had known the applicant since an unspecified date in 1981, and that they are close friends who have shared many activities together.
- An affidavit, dated March 26, 2002, from [REDACTED] Dallas, Texas, stating that she met the applicant at the Azteca Bakery on an unspecified date in 1987 and has known him since that time.
- An affidavit, dated April 16, 2002, from [REDACTED], Houston, Texas, stating that had known the applicant since they were children, and that he has been acquainted with the applicant in the United States since an unspecified date in 1984. [REDACTED] further states that the applicant lives in Dallas, and that he and the applicant visit each other with their families.
- A notarized letter, dated March 30, 2002, from [REDACTED], stating that she had known the applicant since an unspecified date in 1984, and that they have become close friends. [REDACTED] further states that she visits with the applicant and his family on Sundays, as they are members of her church.
- A notarized letter, dated March 31, 2002, from [REDACTED]g, Dallas, Texas, stating that she had known the applicant since an unspecified date in 1982 , and that the applicant worked with her husband, [REDACTED]g, at the Azteca Bakery for about 5 years.

For the most part, the above-listed affidavits from acquaintances do not provide the specific dates of the applicant's continuous residence to which the affiants could personally attest and the address(es) where the applicant resided throughout the period which the affiants had known the applicant. The affidavits also failed to indicate how frequently and under what circumstances the affiants saw the applicant during the requisite period, lacked details that would lend credibility to the claimed relationship, and provided little, if any, basis for concluding that the affiants actually had direct and

personal knowledge of the events and circumstances of the applicant's residence in the US during the requisite period. Therefore, they can be afforded only minimal evidentiary weight.

On March 10, 2003, the applicant was scheduled for an interview required in connection with his Form I-485 application. At the time of interview, the applicant was requested (on a Form I-72) to submit additional evidence in order to establish his unlawful residence in the United States during the requisite time period. In response, the applicant, through counsel, submitted: photocopies of the back of a postcard, photocopies of photographs of the applicant, and an affidavit from an acquaintance. The affidavit, dated March 21, 2003, from [REDACTED] stated that the affiant had known the applicant since 1984 when he met him as an employee of Azteca Bakery - owned by a friend [REDACTED]). This affidavit lacked details similar to those discussed above.

On July 17, 2003, the director issued a Notice of Intent to Deny (NOID) advising the applicant that although he had provided evidence of his residence in the United States since 1990, he had failed to establish by a preponderance of the evidence that he had resided in the United States during the required period – from January 1, 1982, through May 4, 1988. The director noted that the photographs did not give any indication of the date on which they were taken and that the photocopy of the back of the postcard did not give any indication as to its age and/or date the on which it was mailed. The director granted the applicant 30 days to submit additional evidence.

In response to the NOID, counsel submitted a letter, dated August 13, 2003, stating that the district director had failed to properly define “a preponderance of the evidence,” and that the applicant had gone to great lengths to update formerly submitted evidence, as well as to provide new evidence in support of his application. In support of the response, counsel provided additional affidavits from persons who claimed to have known the applicant since 1982 and 1984, a performance certificate dated 1984, a photocopy of a business card for La Azteca Bakery, and photocopies of Internal Revenue Service (IRS) Forms W-2 for 1990 issued to the applicant by the bakery. The affidavits submitted in response to the NOID also lacked details similar to those discussed above.

In a decision to deny the application dated September 3, 2005, the district director concluded that the applicant “failed to provide verifiable evidence of his unlawful presence in the United States during the required time period.” The district director specifically noted that although the owner of La Azteca Bakery and at least two affiants were available to provide specific evidence of the applicant's employment at the bakery, no such evidence had ever been produced.

Counsel filed a timely appeal from the district director's decision on October 6, 2005. On appeal, counsel asserts that the applicant has submitted sufficient evidence of residency and provides a partial list of the documentation previously submitted by the applicant. In support of the appeal, counsel also submits new evidence, including photocopies of:

Pages from the 1981 Southwestern Bell Yellow Pages telephone directory for Dallas, Texas, showing a listing for La Azteca Bakery.

An Assumed Name Certificate, dated May 23, 1988, showing that [REDACTED] applied to do the business under the name of La Azteca Bakery.

- A Form 668(Y) Notice of Federal Tax Lien Under Internal Revenue Laws, dated October 22, 1991, addressed to taxpayer [REDACTED] of La Azteca Bakery.  
A Form 68(Z) Certificate of Release of Federal Tax Lien, dated January 28, 1994, addressed to [REDACTED] of La Azteca Bakery.
- A Texas State Tax Lien notice, dated May 14, 1997, addressed to [REDACTED] DBA La Azteca Bakery, Tax ID # [REDACTED]
- A page verifying Taxpayer and Vendor Account Information from the website to the Texas Comptroller of Public Accounts, listing [REDACTED] as the sole owner of a business with Taxpayer ID # [REDACTED]

While this new evidence establishes that [REDACTED] was the owner of La Azteca Bakery from in or about 1981 through in or about 1997, the applicant still has not submitted any evidence from Mr. [REDACTED] declaring (1) whether the information provided by him concerning the applicant's employment was taken from company records, identifying the location of such company records and stating whether such records are accessible or, in the alternative, stating the reason why such records are unavailable, or (2) if official company records are unavailable, explaining why such records are unavailable.

It is further noted that on March 20, 1990, the applicant filed a Form I-687, Application for Status as a Temporary Resident (Under Section 245 of the Immigration and Nationality Act). On that form, the applicant indicated that his unlawful residence in the United States began in January 1981. At # 16, where applicants are instructed to list their last date of entry into the United States, the applicant indicated that he last entered the United States without a visa on August 1, 1987. At # 35, where applicants are instructed to list their absences from the United States since entry, the applicant indicated that he had visited his parents in Mexico from July 1987 to August 1987. At # 32, where applicants are instructed to list information concerning their relatives, the applicant indicated that he had a wife and two daughters, [REDACTED] (born in Mexico on March 15, 1987) and [REDACTED] (born in Mexico on February 24, 1989), who were now living in Dallas, Texas.

During an interview on April 1, 1991, the applicant stated that he had a common-law wife, [REDACTED] (born in Mexico on February 1, 1967), and that she and his two daughters had been living in Dallas, Texas for 1½ years. He also stated that he had obtained a "passport and visa" in 1985.

On April 23, 2002, the applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status, under the LIFE Act. At Part I, the applicant indicated that he had last entered the United States in November 1985.

In summary, the statements made on the applicant's Forms I-687 and I-485, testimony given by the applicant at interview, and documentation submitted in connection with the applicant's claim, are contradictory. The applicant has given two dates of last entry into the United States (November 1985 and August 1, 1987). He has also stated that he resided continuously in the United States since

January 1981, except for a 1-month visit to Mexico (from July 1, 1987 to August 1, 1987). However, his children were born in Mexico in March 1987 and February 1989 (probable conception dates, therefore, being in June 1986 and May 1988). He has stated that he had been married one time, and also claimed to have a common-law wife. He has stated that his common-law wife was living in the United States for 1 ½ years prior to April 1, 1991 (therefore, since in or about October 1989), while a notarized statement from an acquaintance attests that his wife and children had lived in the United States from November 1987 until July 2003. The applicant also stated that he received a passport and visa in 1995, but has not further explained under what methods, where, and specifically when he obtained, and may have used, such documents.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the 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, 591-92 (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 (5<sup>th</sup> ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

Given the above-noted insufficiencies and discrepancies in the evidence provided, 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.