



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: CHICAGO Date: **APR 10 2008**  
MSC 02 010 61320

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:  
[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits [or Records] Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 argues that the director, in his Notice of Decision, cited 8 C.F.R. § 103.2(b) which is not the law as regard to the LIFE Act.

Although the director incorrectly applied the regulation at 8 C.F.R. § 103.2(b) to the instant application, it is harmless error because the AAO conducts a de novo review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.12(f).

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).

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

- A ticket (no. [REDACTED]) from the Galveston County Sheriff's Department issued on November 21, 1987, along with a receipt of payment dated December 16, 1987, from the state of Texas in Cause no. [REDACTED].  
Notices from the Galveston Municipal Court regarding the issuance of a warrant for an unpaid ticket and payment for ticket no. [REDACTED] issued on November 30, 1987.  
A notice dated December 26, 1987, from the Municipal Court City of Galveston (Texas) regarding the payment of a ticket (no. [REDACTED]).
- A letter dated September 17, 1990, from [REDACTED], general manager of Northmoor Country Club, in Highland Park, Illinois, who indicated that the applicant was employed during the full season of 1988.
- An affidavit notarized August 29, 1990, from [REDACTED] of Texas City, Texas, who indicated that he has known the applicant since November 1981, and attested to the applicant's residence in San Leon, Texas from November 1981 to June 1987.
- A Car Sales Invoice dated October 13, 1987 and receipts dated during October and November 1987, for a purchase of a vehicle and tax and title of a vehicle.
- A Certificate of Title issued in Texas on December 11, 1987.
- Documents from the Texas Department of Public Safety dated June 3, 1987.
- Fisherman's licenses issued in Texas on January 9, 1986, August 29, 1986, and August 13, 1987.
- A Texas identification card which expired on May 5, 1990.
- An affidavit notarized October 9, 1990, from [REDACTED] of La Porte, Texas, who indicated that he has known the applicant since 1981 and attested to the applicant's departure from the United States from June 1987 to August 1987.
- A Form 1099-Misc issued in 1987 in the amount of \$173.00 from [REDACTED] of Texas City, Texas.
- A Form 1099-Misc issued in 1987 in the amount of \$4336.69 from [REDACTED] of Dickinson, Texas.
- Receipts dated December 27, 1987, and January 16, 1988.

In his Notice of Intent to Deny issued on April 21, 2003, the director informed the applicant that he had provided sufficient evidence to establish his continuous residence in the United States since 1986. The applicant was advised that he did not provide sufficient primary or secondary evidence to establish his claimed residence prior to 1986. The director noted that the affidavits and other documentation had been taken into consideration; however, it was determined that the applicant had not established by a preponderance of evidence that she met the requirements to adjust his status under the LIFE Act.

The applicant, in response, provided copies of the documents that were previously submitted.

On appeal, counsel argues that Citizenship and Immigration Services has not presented any evidence against the applicant's submission, raised a single piece of conflicting evidence or stated that even a single piece of evidence is anything but true. Counsel asserts that the applicant has met his burden of proof. Counsel provides an affidavit notarized June 20, 2003, from [REDACTED] personnel representative at Hillman Shrimp and Oysters, who attested to the applicant's employment as a fisherman's assistant from November 1, 1981 to June 1987 and from August 1987 to April 1988.

In this instance, the applicant submitted evidence that corroborates his claim of residence in the United States during the requisite period. The applicant provided affidavits from individuals, all of whom provide their current addresses and/or telephone numbers and indicate a willingness to testify in this matter. The record contains no evidence to suggest that the director attempted to contact any of the former employers to verify the authenticity of the employment documents submitted. The district director has not established that the information in this evidence was inconsistent with the claims made on the application, or that it was false information. As stated in *Matter of E--M--*, *supra*, when something is to be established by a preponderance of evidence, the applicant only has to establish that the asserted claim is probably true. That decision also points out that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. The documents that have been furnished may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

The documentation provided by the applicant supports by a preponderance of the evidence that the applicant satisfies the statutory and regulatory criteria of entry into the United States before January 1, 1982, as well as continuous unlawful residence in the country during the ensuing time frame of January 1, 1982 through May 4, 1988, as required for eligibility for legalization under section 1104(c)(2)(B)(i) of the LIFE Act.

Accordingly, the applicant's appeal will be sustained. The district director shall continue the adjudication of the application for permanent resident status.

**ORDER:** The appeal is sustained.