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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 03 248 64416

Office: DALLAS

Date:

APR 17

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. If your appeal was dismissed or rejected, all documents have been returned to the National 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, Dallas, Texas, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant had not demonstrated that he was continuously present in the United States in an unlawful status since before January 1, 1982, through May 4, 1988. We note, however, that an applicant is required to only show physical presence in the United States from November 6, 1986, through May 4, 1988. Nonetheless, the applicant has failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

The applicant provides additional documentation 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. Section 1104(c)(2)(B) of the LIFE Act; 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 or petitioner 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 or petition.

Although Citizenship and Immigration Services (CIS) 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. 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.

In an affidavit to determine class membership, which he signed under penalty of perjury on October 20, 1990, the applicant stated that he first entered the United States on January 5, 1980. He stated that he had not left the United States since his first entry. On his Form I-687, Application for Status as a Temporary Resident, the applicant listed the following addresses during the qualifying period: January 1980 at [REDACTED] Dallas, Texas; and February 1981 at 1531 Fairview in Dallas. He also stated listed the following employers: Lincoln Pro Company in Dallas from February 1981 to December 1986, and [REDACTED] (no employer identified) in Duncanville, Texas from June 1987.

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

1. An August 29, 1990, affidavit from N [REDACTED] in which she stated that she had known the applicant since 1980, and that he lived in her home at [REDACTED] in Dallas from January to December 1980.
2. An October 2, 1990, sworn statement, allegedly from the applicant's landlord at [REDACTED] in Dallas, Texas, from February 1981 to November 1987, and that the applicant paid rent of \$160 per month. The signature on the statement is illegible; however, the address of the landlord is also listed as [REDACTED]. The applicant submitted no documentation such as rent receipts or utility bills to corroborate his rental at this address.
3. An October 19, 1990, affidavit from [REDACTED] in which she stated that to her personal knowledge, the applicant had lived in Dallas since February 1981. The affiant stated that the applicant is related to her grandson, but did not provide information as to how she dated the applicant's arrival in the United States.
4. A September 10, 1990, letter from [REDACTED], in which he stated that he had known the applicant since February 1981 and had been the applicant's foreman at Lincoln Property from 1981 to 1986. [REDACTED] did not state how he dated the applicant's employment with Lincoln Property or his own personal relationship with the applicant.
5. A December 19, 2003, notarized statement from [REDACTED] in which he stated that he had known, and had been a friend, of the applicant for over 20 years. [REDACTED] stated that he had worked with the applicant at Greenscape System for 16 years; however, he provided no information on his initial acquaintance with the applicant. Further, the applicant did not identify Greenscape System on his Form I-687 application as one of his employers during the qualifying period.
6. An August 27, 1990, letter from Duncanville Landscaping Company in Duncanville, Texas, signed by [REDACTED] stating that the applicant had been employed with the company since June 1987. [REDACTED] did not indicate his position with the company or his authority in providing information about the applicant's employment. Further, the letter did not provide the applicant's address at the time of employment, state the applicant's duties, or indicate whether the information was taken from company records, as required by 8 C.F.R. § 245a.2(d)(3)(i).

7. An August 27, 1990, letter from [REDACTED] in which she stated that the applicant rented a room from her at [REDACTED] in Dallas, from February 1988 to April 1989. The applicant did not list this address on his Form I-687 application as one at which he lived during the qualifying period.

On March 23, 2005, the director issued a Notice of Intent to Deny in which she advised the applicant that he failed to provide sufficient credible and verifiable evidence of his continuous presence and residence in the United States during the qualifying period. In response, the applicant submitted the following additional documentation:

8. An April 16, 2005, affidavit from [REDACTED], in which he stated that he had known the applicant since 1979 when they lived in Mexico. The affiant stated that he could not attest to the applicant's arrival in the United States but that it proceeded his own entry in 1980. The affiant provided evidence to document his arrival in the United States at the time indicated.
9. An April 16, 2005 affidavit from [REDACTED], in which he now stated that he had known the applicant since 1981. The affiant stated that he and the applicant had lived in the same apartments and had worked in the same place.

The director determined that the applicant had failed to establish his eligibility for adjustment of status under the LIFE Act and denied the application on September 17, 2005.

On appeal, the applicant submits two new affidavits from [REDACTED] and [REDACTED] z. In his October 8, 2005, affidavit, [REDACTED] states that he entered the United States in March 1980, and that he "met up" with the applicant again while playing soccer. In his October 8, 2005, affidavit, [REDACTED] z states that the applicant is his cousin, and that they "actually met around May of 1980" and became close friends when they shared a house at [REDACTED] in Dallas.

The applicant provided no contemporaneous evidence, such as rent receipts, paycheck stubs, letters, or similar documentation to establish his residency in the United States during the qualifying period. Additionally, the employment letters submitted by the applicant fail to provide the information required by 8 C.F.R. § 245a.2(d)(3)(i), and are therefore of no probative value. Further, the affidavits submitted by the applicant lack consistency and detail such that it can be concluded by a preponderance of the evidence that the applicant resided in the United States during the required period. For example, [REDACTED] provided three affidavits, indicating that he did not know when the applicant arrived in the United States but stated that it was prior to his arrival in March 1980. However, there is no evidence in the record to establish his knowledge of the applicant's residence in the United States prior to his arrival or when Mr. [REDACTED] himself actually arrived. Further, he states that he met the applicant again while playing soccer but did not indicate when this occurred. [REDACTED] stated in a 2003 affidavit that he had known the applicant for 20 years, which would put his meeting with the applicant in 1983. However, in his 2005 affidavit, he stated that he first met the applicant in 1981 and that they later shared a house. [REDACTED] like others who submitted affidavits and statements on behalf of the applicant, provided no information about how they dated their acquaintance with the applicant or their knowledge of his presence and residency in the United States.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the

applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, he 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.