

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L2

[Redacted]

FILE:

[Redacted]

MSC 03 251 63247

Office: LOS ANGELES

Date: **AUG 01 2008**

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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has 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, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant failed to establish that he had resided in the United States in continuous unlawful status since prior to January 1, 1982, through May 4, 1988.

A Form G-28, Notice of Entry of Appearance as Attorney or Representative, has been submitted on behalf of the applicant by [REDACTED] who indicates that he is a law graduate representative pursuant to 8 C.F.R. § 292.1(a)(2). However, [REDACTED] has not submitted a statement that he is appearing under the supervision of a licensed attorney or accredited representative and that he is appearing without direct or indirect remuneration from the applicant, pursuant to the provisions of 8 C.F.R. § 292.2(iii). Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant.

On appeal, the applicant submits a brief.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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 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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). *See* 8 C.F.R. 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant’s own testimony. 8 C.F.R. § 245a.13(f). Affidavits indicating specific, personal knowledge of the applicant’s whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant’s past employment should be on employer letterhead stationery, if the employer has such stationery, and 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 applicant, a native and citizen of Mexico, submitted a Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act), in or about January 1991. On the application, the applicant claimed to have entered the United States without inspection on June 18, 1981, and to have traveled to Mexico on two occasions – from November 15, 1983, to December 2, 1983, because his wife was having a baby; and from January 30, 1988, to February 3, 1988, to visit family.

On June 8, 2003, the applicant submitted a Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act. In connection with the Form I-485, the applicant provided a list of his absences from the United States which included the following two trips in addition to the ones previously provided on the Form I-687: from December 1982 to February 1983, and from January 20, 1987, to March 29, 1987 – both to visit family in Mexico.

On April 26, 2006, the district director issued a Notice of Intent to Deny (NOID) the Form I-485, stating that "...[T]he file does not contain sufficient documentary evidence to prove [the applicant's] proclaimed entrance prior to January 1, 1982, and continuous residence through May 4, 1988...." The district director informed the applicant that he had 30 days from the receipt of the NOID "to explain discrepancies or rebut any adverse information." The applicant responded to the NOID on May 23, 2006, by submitting a letter and additional documentation.

On June 29, 2006, the director denied the application, determining that "...the information [the applicant] submitted...failed to overcome the grounds for denial as stated in the NOID...."

On appeal, the applicant submits a brief asserting that: (1) he believes in good faith that he is eligible for adjustment of status under the LIFE Act; (2) he has submitted sufficient evidence to establish his eligibility for the benefit sought; (3) he is a bona fide class member;¹ and, (4) he will submit additional documentation in support of the application to establish his presence in the United States during the requisite time period and will further make a showing of good moral character.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period.

A review of the record reveals that the applicant has submitted the following documentation in an attempt to establish his eligibility for adjustment of status under section 1104 of the LIFE Act:

Identification and Passport Entry

The applicant submitted a photocopy of pages from his passport indicating that he was lawfully admitted to the United States as a non-immigrant visitor for pleasure (B-2) at Nogales, Arizona, on June 18, 1981. It is not clear why the applicant initially claimed on his Form I-687, signed on January 5, 1991, that he had entered the United States across the California border on that date, but stated on a "Form for Determination of Class Membership in *CSS v. Meese*," signed on February 27, 1991, that he had entered without inspection.

It is noted that the original of the passport was not provided, nor were photocopies provided of all of the pages in the passport, which would have verified whether the applicant made any subsequent entries into the United States and/or Mexico during the period of the passport validity (June 1981 through June 1983). The nonimmigrant visa issued to the applicant on June 12, 1981 at the United States Consulate in Mexico City was valid for multiple entries through June 12, 1986.

¹ Under the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements)

The applicant also submitted a photocopy of a personal identification card (*cedula*), containing his photograph and signature, issued by the "Secretaria de Education Publica, Direccion General de Profesiones" on December 30, 1982. It can be assumed that the applicant obtained this document while in Mexico during his absence from the United States – from December 1982 to February 1983 – claimed when filing the Form I-485.

Employment Evidence

The applicant submitted a letter, dated January 4, 1991, from El Dorado Restaurant/El Tapatio, stating that the applicant was employed at El Dorado Restaurant from December 1981 to January 1987 as a cook. The letter is a fill-in-the-blank document, is not on company letterhead stationery, and the name of the employer is not type-written (there is only an illegible signature). The letter does not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i) in that it does not provide the applicant's address at the time of his employment, show periods of layoff (if any), and 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. As such, the letter has minimal probative value. It is further noted that the applicant claimed to have been employed by El Dorado Restaurant as a bouncer, not as a cook, on his Forms I-687 and I-485.

The applicant also submitted employee earnings statements and pay stubs dated in or after April 1987.

Affidavits

1. A fill-in-the-blank affidavit, dated January 4, 1991, from [REDACTED] of Oxnard, California, stating that he has personal knowledge that the applicant resided at an unspecified address in Oxnard from September "2981" to April 1987, because the applicant and his wife occupied a room in his home and shared expenses.
2. An un-notarized fill-in-the-blank affidavit, dated February 27, 1991, from [REDACTED] of Oxnard, California, stating that she is a good friend of the applicant's family and that the applicant departed the United States on two occasions - from November 15, 1983, to December 2, 1983, and from January 30, 1988, to February 30, 1988.
3. A fill-in-the-blank affidavit, dated February 28, 1994, from [REDACTED] of Oxnard, California, listing the applicant's specific addresses in Oxnard from December 1981 to February 1994, and stating that the applicant departed the United States on two occasions – from November 15, 1983, to December 2, 1983, and from January 30, 1988, to February 3, 1988.

4. A notarized "declaration" on behalf of the applicant, dated August 4, 2006, from [REDACTED] of Lawndale, California, stating, in part, that he met the applicant in 1981 through his (the applicant's) sister and that in December 1981, the applicant joined his family for a Christmas celebration and has been a treasured family friend who has been present for several special family occasions.
5. A notarized "declaration" on behalf of the applicant, dated July 31, 2006, from [REDACTED] of Norwalk, California, stating, in part, that he met the applicant in 1981 at a family gathering at the home of [REDACTED] (see No. 4, above) and that the applicant told him he had arrived in the United States in June 1981.
6. A notarized "declaration" on behalf of the applicant, dated August 9, 2006, from [REDACTED] of Santa Paula, California, stating, in part, that he met the applicant in December 1981 and that they spoke at El Dorado Restaurant where the applicant was working.
7. A notarized "declaration" on behalf of the applicant, dated August 3, 2006, from [REDACTED] of Santa Paula, California, stating, in part, that he met the applicant in 1981 when he was working at El Dorado Restaurant, and that the applicant rented a room from his [REDACTED] cousin, [REDACTED] (see No. 1, above). [REDACTED] provides his full address, telephone number, and states that he is willing to testify on the applicant's behalf in person if deemed necessary.
8. A letter, dated August 15, 2006, from [REDACTED] of Oxnard, California, stating, in part, that she met the applicant through a friend, [REDACTED] (see No. 9, below) in 1982. She further states that "...[O]n my lunch hours I would meet [the applicant] at El Dorado restaurant because he was working over there. I met his daughter [REDACTED] [the applicant's son]..."
9. An affidavit, dated May 31, 2003, from [REDACTED] stating, in part, that he met the applicant sometime in July 1983. [REDACTED] does not give his address or telephone number for contact.
10. An affidavit, dated May 31, 2003, from [REDACTED] stating, in part, that he met the applicant sometime in August of 1985.

None of the affidavits provided are accompanied by proof of identification or any evidence that the affiants actually resided in the United States during the relevant period. The affidavits noted in Nos. 1, 2, and 3, above, are fill-in-the-blank documents wherein the affiants are generally vague as to how they date their acquaintances with the applicant, how often and under what circumstances they had contact with the applicant during the requisite period, and lack details that would lend credibility to their claims.

The affidavits provided in Nos. 4 and 5 contain consistent and credible testimony regarding the affiants having seen the applicant in December 1981 at the home of [REDACTED]. The affidavits provided in Nos. 1 and 7 are consistent regarding the applicant's rental of a room in Oxnard from [REDACTED], although neither affiant provides the specific rental address. Each of the affiants in Nos. 1 through 7 provide their full addresses, or telephone numbers, and state their willingness to testify on the applicant's behalf in person if deemed necessary. However, there is little detailed information contained in the declarations concerning the affiants having direct and personal knowledge of the applicant's whereabouts and activities either prior or subsequent to their having met him in December 1981, although each the affiants in Nos. 4, 5, and 6 provide recollections of the applicant's autistic son, [REDACTED], who was not born until February 4, 1988.

(No. 8, above) states that she met the applicant through [REDACTED] in 1982; however, [REDACTED] (No. 9) states that he did not meet the applicant until 1983. [REDACTED] also indicates in her affidavit that she saw the applicant's children [REDACTED] while he was working at El Dorado Restaurant. However, the applicant lists (on the Form I-485) his daughter's name as "Arrate," not [REDACTED] and that he terminated his employment at El Dorado Restaurant on March 15, 1987, prior to the birth of his son in 1988. It is incumbent upon the applicant to resolve such inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Id.*

In summary, the applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), and no hospital or medical records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv). The applicant also has not provided documentation (including, for example, money order receipts, children's birth certificates, bank book transactions, letters of correspondence, a Social Security card, or automobile, contract, and insurance documentation) - other than his passport entry - according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (I) and (K).

The documentation provided by the applicant consists primarily of third-party affidavits ("other relevant documentation"). These documents lack specific details as to how the affiants knew the applicant - how often and under what circumstances they had contact with the applicant - throughout the requisite time period from 1982 through 1988. Furthermore, there are inconsistencies and insufficiencies, as noted above, in some of the documentation provided.

After a review of the record, the AAO finds that the documentation submitted by the applicant is insufficient to establish his required continuous unlawful residence in the United States since prior to January 1, 1982, 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.