



U.S. Citizenship  
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[REDACTED]

FILE: [REDACTED]  
MSC 02 319 60324

Office: CHICAGO

Date: **AUG 15 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:

[REDACTED]

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, Chicago, Illinois, 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 failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status for the requisite statutory time period.

On appeal, counsel for the applicant asserts that the applicant has not only met his burden of proof, but has in fact established clear proof of his presence in the United States during the required time period. Counsel submits a brief in support of the appeal.

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 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).

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 the Notice of Intent to Deny (NOID), dated February 17, 2005, the director acknowledged the limited documentation submitted to show the applicant's physical presence in the United States in May 18, 1986. The director found, however, that the record did not contain primary or secondary evidence sufficient to establish the applicant's claim of entry into the United States prior to January 1, 1982 through the requisite time period. In an April 7, 2005 decision, the director noted that the applicant had provided affidavits and pay stubs from May 1986 to May 1988, but determined that the evidence submitted did not establish by a preponderance of the evidence that the applicant met the requirements to adjust status under the "LIFE" Act.

Upon review of the totality of the record, the AAO finds inconsistencies and discrepancies that have not been resolved. The record includes a Federal Bureau of Investigation (FBI) printout based on the applicant's fingerprints showing the applicant was arrested or received on March 20, 1978 in violation of immigration laws. The record also contains a warrant of deportation for the applicant listing the applicant's date of departure from the United States as March 29, 1978. In an interview with an Immigration and Naturalization (INS) officer on May 13, 1996, the applicant stated he first entered the United States in August 1979. In an interview with a Citizenship and Immigration Services (CIS) officer on May 8, 2006, when asked about encounters with "immigration" on March 20, 1978, the applicant stated that it was not him. The applicant's lack of forthrightness regarding his initial entry into the United States in 1978 and subsequent deportation detracts from the credibility of his subsequent claim of entry into the United States in August 1979.

The record also contains a Form I-687, Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, submitted on or about August 10, 1993.<sup>1</sup> On the Form I-687, the applicant lists his addresses as: Fresno, California from 1979 to 1981; ██████████, Desplaines, Illinois from August 1981 to July 1983; ██████████, Chicago, Illinois from August 1983 to February 1986; ██████████, Glenview, Illinois from March 1986 to February 1992; and ██████████, Desplaines, Illinois from March 1992 to the date of filing the application.

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<sup>1</sup> The record contains a second Form I-687 date stamped as received by CIS on December 27, 2005. This Form I-687 contains the same information as the initial Form I-687 filed August 10, 1993; except that the Form I-687 filed in December 27, 2005 identifies the applicant's Fresno, California employer as ██████████. Further, it appears the CIS officer used this Form I-687 during the May 8, 2006 interview to confirm the information on the Form I-687 with the applicant.

The Form I-687 also lists the applicant's employers as: Fresno, California (no employer name)<sup>2</sup> in agriculture from 1979 to October 1981; [REDACTED] in Chicago as a laborer from November 1981 to March 1982; Catering Concepts in Chicago, Illinois as a baker from March 1982 to December 1985; and North Shore Country Club in Glenview, Illinois as a cook from May 6, 1986 to the date the application was filed in 1993.

In support of the Form I-485, filed August 15, 2002, the application that is the subject of this appeal, the applicant provides several employment letters:

- An employment letter from [REDACTED] located in Fresno, California, dated August 22, 2002, that is signed by [REDACTED] owner. Mr. [REDACTED] states that the applicant was employed with this company as a laborer from 1981 to 1983 in a seasonal position that deals with agriculture only.
- A letter from Catering Concepts located in Chicago, Illinois, dated August 10, 1993, that is signed by [REDACTED]. Mr. [REDACTED] states that the applicant worked as an assistant baker and pot washer from 1982 to 1985. Mr. [REDACTED] also indicates that the applicant lived with him during this time but does not provide the residence's address.
- An employment letter from North Shore Country Club located in Glenview, Illinois, dated August 9, 2002, that is signed by [REDACTED] General Manager. Mr. [REDACTED] states that the applicant had been employed with North Shore since March 12, 1986 to present.

The above letters present internal inconsistencies regarding the time frame of the applicant's initial claimed employment. The letter from [REDACTED] located in Fresno, California indicates that the applicant was employed in a seasonal position between 1981 and 1983; while the letter from Catering Concepts located in Chicago, Illinois indicates that the applicant was employed from 1982 to 1985 at Catering Concepts and further indicates that the applicant lived in Chicago, Illinois during this time frame. The applicant does not explain how he worked in Fresno, California between 1981 and 1983 while also working for Catering Concepts and living in Chicago, Illinois during this time period. This inconsistency undercuts the probative value of both the [REDACTED] letter and the Catering Concepts letter.

In addition, the above letters conflict with the information listed on the applicant's Form I-687 and verified by him at a May 8, 2006 interview. The Form I-687 indicates that the applicant worked in Fresno, California for [REDACTED] from 1979 to 1981 and then includes another employer, [REDACTED] located in Chicago, Illinois, that is not listed on the Form I-485, as the applicant's employer from November 1981 to March 1982. The Form I-687 also lists Catering Concepts located in Chicago, Illinois as the applicant's employer from March 1982 to December 1985. Thus, the information on the Form I-687 conflicts with the information the applicant provided on the Form I-485 as well as providing conflicting information with the [REDACTED] letter. The conflicting information also diminishes the probative value of the [REDACTED]

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<sup>2</sup> As footnoted above, the applicant's Form I-687 date stamped as received by CIS on December 27, 2005 identifies the applicant's Fresno, California employer as [REDACTED]

Farm letter. It is incumbent upon the applicant to resolve any 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).

In addition, the AAO also finds that the letters/affidavits submitted do not contain declarations that the employee information was taken from company records, or identify the location of such company records, or state whether such records are accessible or in the alternative state the reason why such records are unavailable, as required under 8 C.F.R. § 245a.2(d)(3)(i).

The AAO takes note of the March 12, 1986 letter from North Shore Country Club and the pay stubs issued from North Shore Country Club to the applicant beginning in March of 1986. The letter coupled with the copies of the pay stubs issued to the applicant establishes the applicant's physical presence in the United States from March 1986 to May 4, 1988.

The record also contains an August 6, 2002 letter from [REDACTED] Secretary, of the Saint Mary's Church in Des Plaines, Illinois. The author of the letter indicates that the applicant has been a parishioner at the church since the early eighties and that the author has known the applicant since 1986 as someone who attends weekend mass on a regular basis. The letter is written on church letterhead and bears the church seal. This letter does not include the address(es) of the applicant during his membership in the church, does not provide inclusive dates of membership, and does not establish the origin of the information being certified. See 8 C.F.R. § 245a.2(d)(3)(v). The author of the letter states, generally, that the applicant has been a parishioner since the eighties; however, this generality is insufficient to establish that the applicant entered the United States prior to January 1, 1982 and continuously resided in the United States in an unlawful status until March 1986. In addition, the applicant on the Form I-687 filed December 27, 2005, indicates that he has been a member of ST. Mary's Church since 1986. As noted above, the AAO accepts that the applicant was present in the United States from March 1986 to May 1988.

Similarly, the September 6, 2006 letter signed by [REDACTED] Associate Pastor of the St. Stephen Catholic Church, Des Plaines, Illinois fails to comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(v) regarding statements from church or other organizations. [REDACTED] states generally that the applicant has been a parishioner of the St. Stephen church since 1981, that the applicant is an active parishioner, and that his child was baptized in May 1997. The Reverend does not provide inclusive dates of membership and does not establish the origin of this information. In addition, the applicant did not note his membership in this church organization on the Form I-687 filed December 27, 2005. The applicant's claim to be a member in two churches without explanation during the same time period also presents an inherent inconsistency. Again, it is incumbent upon the applicant to resolve any 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. at 591-92.

The AAO has also reviewed the form affidavits in the record regarding the applicant's presence in the United States. The form affidavits from: [REDACTED] dated August 10, 1993; [REDACTED] dated August 10, 1993; and [REDACTED] dated August 10, 1993, state generally that the affiants' have known the applicant since 1980 or 1981. The affiants do not provide any substantive details of the events and circumstances surrounding the initial relationship and subsequent interaction between the affiants' and the applicant that is sufficient to establish the applicant's continuous presence in the United States for the requisite periods. The AAO does not find these affidavits probative as these affidavits do not contain corroborating detail of the relationship and interaction of the affiants and the applicant.

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 beginning prior to January 1, 1982, through May 4, 1988. The applicant has submitted deficient affidavits and letters that are inconsistent with his statements and his whereabouts when he first entered the United States. The applicant has denied his entry and subsequent deportation from the United States in 1978. The applicant has not provided credible evidence of his residence in the United States prior to January 1, 1982 through 1986. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and the submission of inconsistent evidence seriously detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), 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 from prior to January 1, 1982, through 1986.

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 to 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.