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U.S. Citizenship  
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FILE:

MSC 03 248 64606

Office: LOS ANGELES

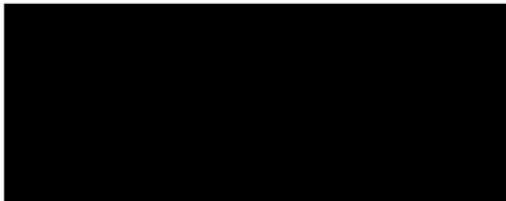
Date: AUG 28 2008

IN RE: Applicant:



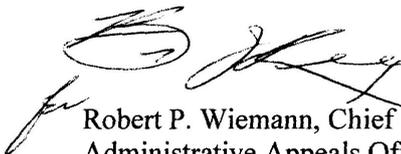
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), *amended by* LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. 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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel asserts that the applicant submitted sufficient credible evidence to establish eligibility, and that the director erred in not considering all of the evidence. Counsel submits additional evidence on 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.

On October 11, 2007, the director issued a notice of intent to deny (NOID) informing the applicant of the Service's intent to deny his LIFE Act application because he had failed to establish the requisite continuous residence. The director noted that the applicant submitted affidavits from [REDACTED] in support of his claim. However, the affidavits were insufficient to establish the requisite continuous residence. The director also noted that the applicant signed a sworn statement on May 7, 1996 stating that his initial entry into the United States was in 1986. The applicant was granted thirty days to respond to the notice.

In the Notice of Decision, dated December 4, 2007, the director denied the instant application based on the reasons stated in the NOID. The director noted that the applicant failed to respond to the NOID. The record, however, reflects that on November 9, 2007, counsel submitted a brief in response to the NOID. In his response to the NOID, counsel states that the applicant does not recall ever making a statement that he first entered the United States in 1986. Counsel states further that the applicant satisfied the preponderance of the evidence standard, and the requirements for permanent residency under the LIFE Act. The AAO also notes that the record does not reflect a statement by the applicant that he first entered the United States in 1986, and therefore withdraws this aspect of the director's decision.

On appeal, counsel asserts that the applicant has submitted sufficient evidence to establish eligibility for LIFE Act benefits. With his appeal, counsel submits a statement in affidavit form from the applicant, dated November 9, 2007.

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. The applicant submitted employment letters and affidavits as evidence to establish the requisite continuous residence in support of his Form I-485 application. The AAO reviewed the entire record. Here, the submitted evidence is not relevant, probative, and credible.

#### Employment Letter / Affidavits

The applicant submitted a letter of employment from [REDACTED] stating that the applicant resided in Gardena, California, from April 4, 1982 through January 1999, and that the applicant worked for his construction company from 1982 to 1985. The affiant, however, does not

state the date or month in 1982 he first became acquainted with the applicant or when the claimed employment began. This affidavit is, therefore, not probative of the applicant's residence in the United States throughout the requisite period.

It is also noted that the letter failed to show periods of layoff, 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 required under 8 C.F.R. § 245a.2(d)(3)(i).

The applicant also submitted:

- 1) An affidavit from [REDACTED] sworn to on May 29, 2003, stating that the applicant resided in Gardena, California, from April 4, 1982 through February 1999, and that the applicant lived with his cousin for six years in Gardena. The affiant does not indicate, however, whether the applicant has been a continuous resident in the United States throughout the requisite period.
- 2) An affidavit from [REDACTED] sworn to on May 29 2003. [REDACTED] attests to knowing the applicant since February 1982. The affiant states that she and the applicant have been close friends ever since their acquaintance began and have been in contact with each. However, the affiant does not state whether the applicant has been a continuous resident in the United States since prior to January 1, 1982, and does not state how she maintained contact with the applicant.

It is noted that none of the affiants state how they dated their acquaintance with the applicant, or how frequently and under what circumstances they met the applicant. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affiants included any supporting documentation of the affiant's presence in the United States during the requisite period. 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.

Contrary to counsel's assertion, none of the three affiants attest to knowing the applicant from prior to January 1, 1982. As such, the affidavits submitted do not establish the applicant's continuous residence from prior to January 1, 1982.

In addition, the applicant provided inconsistent entry dates. In his Form For Determination of Class Membership in CSS VS. MEESE, signed by the applicant on February 16, 1995, the applicant indicated that he first entered the United States in 1981. In a Record of Sworn Statement in Affidavit Form, dated February 23, 1977, the applicant stated that he first entered in 1980. However, on his Biographic Data Form G-325A, signed on June 3, 2003, the applicant indicates that he resided in Mexico from 1981 to 1982, but does not specify when in 1982 his residence in Mexico ended. The applicant has failed to provide an explanation for these discrepancies. These unresolved discrepancies cast considerable doubt on whether the applicant's claim that he illegally entered the United States before January 1, 1982, and resided continuously in an unlawful status in the United

States from prior to January 1, 1982, through May 4, 1988, is true. 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 application. 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status during the requisite period.

The applicant has, therefore, failed to establish that he resided in continuous unlawful status in the United States from before 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.