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U.S. Department of Homeland Security  
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Washington, D.C. 20529



U.S. Citizenship  
and Immigration  
Services

L2



FILE:

MSC 02 248 62691

Office: LOS ANGELES

Date:

JUL 01 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:

Self-represented

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 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.

for 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 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, the applicant asserted that he has submitted all the documents he has in his possession, and would be submitting a brief and/or evidence to the AAO within 30 days. Subsequently, the applicant submitted additional evidence including copies of documents that were previously provided.

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. Section 1104(c)(2)(B)(i) 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 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.

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. Here, the applicant has failed to meet this burden.

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant only provided: 1) two envelopes postmarked in 1985 and 1986 and addressed to the applicant at [REDACTED], Long Beach, California; 2) a letter dated May 22, 2002, from [REDACTED] of Long Beach, California, who attested to the applicant's moral character for the past 17 years; and 3) a letter dated May 20, 2002, from [REDACTED] of Los Angeles, California, who attested to the applicant's moral character.

On October 3, 2005, the director issued a Notice of Intent to Deny, which advised the applicant that the evidence submitted was insufficient to establish entry into the United States before January 1, 1982, and to have continuously resided since that date through May 4, 1988. The applicant, in response, submitted:

- A statement from [REDACTED], who indicated that he has known the applicant for over 20 years and that the applicant was in his employ "doing many things" including landscaping, gardening, some repairs and handyman work around his home from the summer of 1981 to 1988.
- A statement from [REDACTED], who indicated she has known the applicant for over 23 years and that the applicant worked for her family doing mechanical repairs from 1982 to 1989.
- A notarized affidavit from [REDACTED] of Los Angeles, California, who indicated that his wife introduced the applicant to him and attested to the applicant's residence in Long Beach, California from 1985 to 1990.
- A notarized affidavit from [REDACTED] of Long Beach, California, who attested to the applicant's residence in Long Beach, California from 1981 to 1990. The affiant based his knowledge on having repaired cars with the applicant.  
A notarized affidavit from [REDACTED] of Inglewood, California, who attested to the applicant's residence in Long Beach, California from 1981 to 1990. The affiant based her knowledge on having utilized the applicant's mechanical services.
- An additional notarized affidavit from [REDACTED] of Los Angeles, California, who attested to the applicant's residence in Long Beach, California from 1981 to 1990. The affiant asserted that she met the applicant in Guatemala and continued to visit the applicant since his arrival in the United States.
- A notarized affidavit from [REDACTED] of Culver City, California, who attested to the applicant's residence in Long Beach, California from 1981 to 1990. The affiant based his knowledge on having repaired the applicant's vehicle and maintaining a friendship since that time.

The director, in denying the application, noted that the applicant had not presented any documentation of entrance as a foundation on which the affidavits submitted could stand as evidence of continuous residence.

On appeal, the applicant asserts that he entered the United States in July 1981 at the age of 15 and "started working in different places because of my age." The applicant asserts that he has no further documentation to present except for a statement from a former employer, [REDACTED]. The applicant submits a statement from [REDACTED], who indicated that the applicant was in his employ as "a helper" doing mechanical car repairs from 1985 to 1989.

The statements of the applicant regarding the amount and sufficiency of the applicant's evidence of residence have been considered. However, the evidence submitted does not establish with reasonable probability that the applicant was already in the country before January 1, 1982 and that he was residing in continuously unlawful status through May 4, 1988. Specifically:

1. [REDACTED] and [REDACTED] attested to the applicant's employment from 1981 to 1988 and 1985 to 1989, respectively; however, the applicant did not claim employment with these affiants on his Form I-687 application. In addition, neither affiant provided the address where the applicant was residing as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulation, the affiants also failed to 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.
2. Although item 36 of the Form I-687 application requests the applicant to list the full name and address of each employer during the requisite period, the applicant failed to provide any information.
3. [REDACTED] and [REDACTED] claim to have known the applicant for over 17 and 23 years, respectively, but provided no place of residence for the applicant or any details regarding the nature or origin of their relationships with the applicant or the basis for their continuing awareness of the applicant's residence.
4. [REDACTED] and [REDACTED] all attest to the applicant's residence in Long Beach since 1981. However, the applicant, on his Form I-687 application, did not claim residence in Long Beach until December 1983.
5. The applicant claimed to have resided in Wilmington, California from July 1981 to December 1983. However, no evidence such as a lease agreement, rent receipts, utility bills or affidavits from affiants was submitted to corroborate this residence.
6. As the applicant was a minor, it is conceivable that he would have been residing with an adult during the earlier stages of the period in question. The applicant's failure to provide the name of the individual he resided with along with an attestation from said individual raises serious questions about the credibility of his claim and the authenticity of the affidavits submitted.

These factors raise significant issue to the legitimacy of the applicant's residence during the period in question.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

The regulation at 8 C.F.R. § 245a.12(e) provides that "[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods." Preponderance of the evidence is defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5<sup>th</sup> ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991). Given the credibility issues arising from the documentation provided by the applicant, it is determined that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982 and resided in this country in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of

the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant 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.