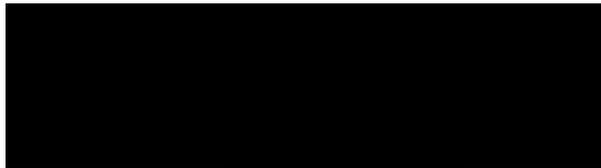


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**U.S. Citizenship
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FILE: [REDACTED] MSC 02 220 61597

Office: HOUSTON

Date: JUN 09 2008

IN RE: Applicant: [REDACTED]

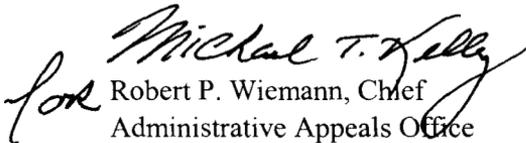
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. 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, Houston, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the record revealed inconsistencies regarding the applicant's entry into the United States before January 1, 1982 and residence continuously in the United States in an unlawful status since that date through May 4, 1988. The director determined that the inconsistencies had not been resolved in the response to the Notice of Intent to Deny (NOID); thus casting doubt on the applicant's credibility, affidavits, and other documentation.

On appeal, counsel for the applicant submits the applicant's April 27, 2005 affidavit, claiming the inconsistencies in the record were due to his previous counsel's anger toward the applicant for employing a new attorney. Counsel also resubmits a printout from the State Bar of Texas showing the applicant's previous attorney had been the recipient of a fully probated suspension on three separate occasions in February 1991, February 1998, and December 2002; had been placed on probation beginning March 1, 1998 to August 31, 1998 and January 1, 2003 to March 30, 2004; and had been the subject of a public reprimand on March 31, 2000. Counsel asserts that the applicant has never lied to the Service and that the applicant's testimony and the supporting evidence is sufficient to meet the preponderance of the evidence standard to establish eligibility under the LIFE Act.

An applicant for permanent resident status under section 1104 of the LIFE Act 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 through May 4, 1988. *See* § 1104(c)(2)(B) of the LIFE Act and 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 states 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 petitioner 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 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).

Preliminarily, the AAO acknowledges the applicant's affidavit regarding his previous counsel and the fact that his previous counsel has been subject to suspensions and a reprimand by the State Bar of Texas. However, any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). Although the applicant in this matter has stated his belief in an affidavit: (1) that his previous counsel was angry with him and thus made false statements pertaining to the applicant; and (2) that his previous counsel did not explain documents that he was signing, the applicant has not provided evidence that he has informed the previous counsel of these allegations or that he has filed a complaint with the appropriate disciplinary authorities regarding his previous counsel's ethical or legal violations. As referenced above, the AAO acknowledges that applicant's previous counsel has been subject to suspensions and a reprimand, but the past suspensions and reprimand do not relieve the applicant from taking the steps outlined in *Matter of Lozada*, regarding ineffective assistance of previous counsel.

On the issue of the applicant's eligibility under the LIFE Act, the evidence of record is not relevant, not probative, nor credible.

On June 27, 1990, the applicant applied for class membership in a legalization class-action lawsuit and submitted Form I-687, Application for Status as a Temporary Resident. On May 8, 2002, the applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

The applicant filed the following documents in support of his claim that he resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988:

- An employment letter from _____ manager, dated February 28, 1990 that indicates the applicant worked as a baker and cake decorator at the Italian Café and Bakery since 1983.
- An employment letter from _____ dated November 7, 1987, that indicates that the applicant is currently employed at Rolling Pin Bakery since 1983 and had taken a one and a half month leave of absence to be with his ill grandfather.

- An employment letter from [REDACTED], dated March 7, 1990, that indicates the applicant was employed as a lawnkeeper, and painter, and also performed periodic maintenance. vacuumed the pool, and ran errands from January 1981 through March 1982. [REDACTED] indicates that the applicant lived at [REDACTED] Houston, Texas, during this time period.
- The affidavit of [REDACTED] the applicant's brother, dated March 17, 1990, wherein the affiant states that the applicant lived with him at [REDACTED] Houston, Texas from 1983 to 1987.
- The affidavit of [REDACTED], the applicant's friend, dated March 13, 1990, that indicates she has known the applicant since 1984 and that when she first met the applicant, the applicant was living at [REDACTED], Houston, Texas.
- The affidavit of [REDACTED] dated March 17, 1990, that indicates he has known the applicant since December 1981 and that when he first met the applicant, the applicant was living at [REDACTED] Houston, Texas.
- A letter dated March 2, 1990, from [REDACTED] that indicates [REDACTED] has known the applicant since February 1984.

The record also contains the applicant's Form I-687, that indicates: (1) the applicant first entered the United States in January 1981; (2) lists the applicant's two children living in Guerrero, Mexico, born April 4, 1985 and August 20, 1986; (3) that the applicant's absences from the United States for a time period beginning January 1, 1982, consisted of a visit from November to December 1987 to Mexico and no others; (4) listed the applicant's addresses as [REDACTED], Houston, Texas, from November 1989 to present, [REDACTED] Houston, Texas, from October 1988 to October 1989, [REDACTED] Houston, Texas, from December 1987 to September 1988, [REDACTED] Houston, Texas, from October 1983 to November 1987, and [REDACTED], Houston, Texas, January 1981 to September 1983; and (5) listed the applicant's employer's as [REDACTED] from January 1981 to March 1982 and [REDACTED] "Italian Café from February 1983 to present.

The record also includes two envelopes addressed to the applicant in the United States. The postmarks on one envelope is illegible and thus cannot be considered probative evidence as regards the applicant's residence in the United States during the requisite time period. The second envelope is postmarked in January 1990 and thus is not probative when establishing the applicant's residence during the pertinent time period. A third envelope shows the applicant as the return addressee at [REDACTED], Houston, Texas, and bears a U.S. postmark of March 8, 1983.

On January 31, 2005, the district director issued a NOID. The director concluded that the information in the file submitted by the applicant's prior attorney, including statements that the applicant had resided in the United States since December 8, 1987 and is a citizen of El Salvador is inconsistent with the applicant's verbal testimony that he first entered the United States in 1981 and resided continuously through 1987 and is

a citizen of Mexico. The director determined that such conflicting information cast doubt on the applicant's credibility, as well as the applicant's claims, affidavits, and documentation.

On March 1, 2005, counsel's new attorney claimed that the applicant could not account for the documentation submitted by his previous attorney and requested that Citizenship and Immigration Services (CIS) take into account the applicant's verbal testimony given on July 14, 2004.

On March 8, 2005, the director denied the application based on the reasons set out in the NOID.

On appeal, counsel for the applicant asserts that the applicant's testimony, the enclosed supporting evidence, and the evidence in the record is sufficient to meet the preponderance of the evidence standard to establish eligibility under the LIFE Act.

In response to the NOID and on appeal, the applicant had the opportunity to provide contemporaneous evidence of having resided in the United States during the statutory period as well as to provide additional affidavits and employment letters that attested to his residence in the United States during the statutory period. In the alternative, the applicant had the opportunity to submit an explanation as to why he was not able to provide documentation of having resided in the United States during the requisite periods.

In this matter, counsel for the applicant requests that the AAO take into account the applicant's verbal testimony comprised of the information that he first entered the United States in January 1981 and is a citizen of Mexico, not El Salvador. Counsel then requests that the AAO take into account the enclosed evidence, evidence consisting of the applicant's affidavit relating to his difficulty with his prior counsel and a document from the Texas State Bar confirming that the applicant's prior counsel had been suspended three times and had received a public reprimand. Counsel further advises the AAO to consider the evidence in the record, although counsel had also stated that the applicant could not account for the documentation submitted by his previous attorney. The record when reviewed in its totality has no consistent, credible documentation that is amenable to verification to confirm the applicant's statement that he first entered the United States in January 1981 and resided in the United States for the requisite statutory time period.

The AAO has considered the affidavits, employment letters, and information on the Form I-687, and the one envelope containing the applicant's claimed return address, but finds that the record does not present consistent, credible evidence that the applicant entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status since that date through May 4, 1988.

For example, the applicant's three claimed employers failed to declare that the information provided was taken from company records, failed to identify the location of any such company records, failed to show periods of layoff, and failed to state whether such records are accessible or in the alternative state the reason why such records are unavailable. Moreover, the applicant provided two letters from different employers, the Italian Café and Bakery and the Rolling Pin Bakery, for the same time period. The applicant offers no explanation or clarification regarding these disparate employers' letters. Further, the applicant's claimed initial employer listed the applicant's address at the time of his employment in 1981 and 1982 as at [REDACTED] Houston, Texas, while the applicant's acquaintance, [REDACTED] in an affidavit indicated that the applicant was living at [REDACTED], Houston, Texas, when the affiant first met the

applicant in December 1981. Further, the applicant's Form I-687 indicated that the applicant lived at [REDACTED] Houston, Texas, from January 1981 to September 1983. The lack of detail provided in the employers' letter and the inconsistencies in the record regarding the applicant's addresses at the claimed time of employment in January 1981 to 1983, as well as the lack of clarifying information regarding the applicant's employers in 1983, undermines the authenticity of these employers' letters. The applicant's inability to obtain authentic letters of employment that provide consistent information seriously detracts from the credibility of his claim of continuous unlawful residence during the requisite period.

Likewise, the three affidavits and one letter in the record by the applicant's brother, a friend, and two acquaintances in support of the applicant's application, do not include any supporting documentation of the affiant's identity or presence in the United States. None of the affiants indicated how they dated their acquaintance with the applicant, how they met the applicant, or how frequently they saw the applicant. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period 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 May 4, 1988.

As noted above, two of the envelopes submitted are not probative as the postmark on one is illegible and the postmark on a second envelope is for a time outside of the requisite time period. The third envelope shows the applicant as the return addressee at [REDACTED] Houston, Texas, and bears a U.S. postmark of March 8, 1983. Yet the applicant's Form I-687 indicates the applicant began living at [REDACTED] Houston, Texas in October 1983, six months later. Thus, the third envelope shows not only a different apartment number but also a different time frame of residence at the [REDACTED] d. Location.

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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In sum, the applicant did not provide any probative, contemporaneous evidence of having resided in the United States during the statutory period, nor did he provide any explanation as to why he was unable to provide such evidence. He submitted employment letters that were either inherently inconsistent or listed information that was inconsistent with other evidence in the record. He also submitted an envelope that was inconsistent with other information in the record. He submitted affidavits that contained contradictory information. The applicant's verbal testimony that he entered the United States in January 1981 and resided in the United States for the requisite time period is not competent, objective evidence sufficient to overcome the inconsistencies and deficiencies in the record. Given the paucity of credible supporting documentation it is concluded that the applicant has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988, as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*. The applicant is, therefore, ineligible for temporary

resident status under section 245A of the Act on this basis. The record lacks any document that might lend credibility to the applicant's claim of entry and residence in the United States for the required time period.

Thus, it is found that the applicant has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988. Accordingly, the applicant is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.