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U.S. Citizenship
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Services

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[REDACTED]

LR

FILE:

[REDACTED]

and [REDACTED]

Office: CHICAGO

Date:

MAY 02 2008

– consolidated herein]
MSC 02 267 62971

IN RE: Applicant:

[REDACTED]

APPLICATION:

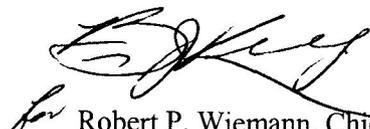
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

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

The director denied the application on the ground that the applicant failed to establish that he resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, the applicant stated that he would try to provide some additional documentation, but no further evidence has been submitted.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. See section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

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 its amenability to verification. See 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 applicant, a native of Mexico, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on June 24, 2002.

On February 1, 2006, the director issued a Notice of Intent to Deny (NOID), indicating that the evidence of record was insufficient to establish the applicant's continuous unlawful residence in the United States from January 1, 1982 through May 4, 1988. The only evidence of the applicant's residence in the United States during this time period, the director pointed out, was a series of affidavits from friends, co-workers, and employers, none of which had supporting documentation and most of which did not contain phone numbers of the affiants for verification purposes. The applicant was granted 30 days to submit additional evidence.

The applicant did not respond to the NOID. On March 14, 2006, therefore, the director denied the application on the ground that the applicant failed to establish his continuous unlawful residence in the United States from January 1, 1982 through May 4, 1988.

On appeal, the applicant asserts that he has lived in the United States since December 1981, and that he was never asked to provide telephone numbers on his affidavits. He indicated that he was in the process of obtaining phone numbers from the affiants and would try to provide them within 30 days. No such phone numbers have been furnished by the applicant, however, nor any other documentation in support of the appeal.

As indicated by the director in his decision, there is no contemporary documentation from the 1980s demonstrating that the applicant was residing in the United States at that time. The only evidence of the applicant's residence in the United States during the years 1982 to 1988 are seven affidavits and letters prepared by acquaintances of the applicant in 1990. They include the following:

A letter from [REDACTED] a resident of Chicago, Illinois, stating that the applicant lived at [REDACTED] in Planada, California, as of December 31, 1981, and worked on a fruit farm – [REDACTED] Farms in San Joaquin, Chahuchila, California – from January to March 1982.

An affidavit from [REDACTED], a resident of Walnut, California, stating that he employed the applicant from June to December 1982 in the construction of his family home.

An affidavit from [REDACTED], a resident of Chicago, stating that the applicant lived at [REDACTED] in Los Angeles, from June 1 to December 31, 1982.

An affidavit from [REDACTED], a resident of Chicago, stating that during the time he was living in Van Nuys, California, from 1981 to 1985, the applicant resided at [REDACTED] in Los Angeles from January 1983 to December 1984, and worked selling fruit on Mount Vernon Avenue and the vicinity.

A letter from [REDACTED], a resident of Walnut, California, stating that the applicant lived in his house from January 1985 to 1990, during which time they "purchased a small business property and a big truck." Mr. [REDACTED] indicated that the applicant was earning \$120-150/week in their business, until he moved to Chicago in February 1990.

- An affidavit from [REDACTED], a resident of Los Angeles, stating that the applicant departed from the United States on August 21, 1987, and returned on September 10, 1987.
- An affidavit from [REDACTED] a resident of Batavia, Illinois, stating that he knows the applicant had been continuously present in the United States since December 1981.

The foregoing affidavits and letters provide little detailed information about the applicant from the end of 1981 to 1988. While the first three acquaintances claimed to know that the applicant was living and working in southern California in 1982, they did not identify their own addresses at that time, a basic credibility requirement since two of them resided in Chicago as of 1990. The same infirmity applies to the affidavits from the last two acquaintances, neither of whom identified a California address of his own at the time he claims to have known the applicant during the 1980s, and one of whom lived in Chicago as of 1990. The letter from [REDACTED] never identified the kind of the business he claimed to have operated with the applicant for five years. The affidavit from [REDACTED] stated that the applicant left the United States for three weeks in 1987 without providing any information about how he departed, where he went, and how he returned. The affidavit from [REDACTED] said nothing whatsoever about his relationship to the applicant and the basis of his knowledge that the applicant had been in the United States since December 1981. None of the seven acquaintances submitted any supporting documentation of their relationship to the applicant during the 1980s – such as photographs, letters, or other documents.

Given the lack of probative evidence in the record, the AAO determines that the applicant has failed to establish that he resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A). Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act. The director's decision will be affirmed.

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