

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529-2090
MAIL STOP 2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L2



FILE:



MSC 02 248 60964

Office: LOS ANGELES

Date: NOV 04 2008

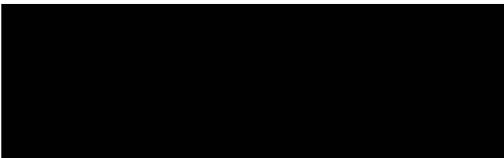
IN RE: Applicant:



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. 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 director in Los Angeles, California. 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 entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal counsel asserts that the director failed to give adequate weight to all of the evidence presented by the applicant.

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).

“Continuous unlawful residence” is defined at 8 C.F.R. § 245a.15(c)(1), as follows: “An alien shall be regarded as having resided continuously in the United States if *no single absence* from the United States has *exceeded forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed.” (Emphases added.)

“Continuous physical presence” is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: “An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of *brief, casual, and innocent absences* from the United States.” (Emphasis added.) The regulation further explains that “[b]rief, casual, and innocent absence(s) as used in this paragraph means *temporary, occasional trips abroad* as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.” (Emphasis added.) 8 C.F.R. § 245a.16(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 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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that he has not.

The applicant, a native of Mexico who claims to have lived in the United States since March 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on June 5, 2002. At that time the record included photocopies of the following documentary evidence of the applicant’s residence in the United States during the years 1981-1988:

- A letter from [REDACTED] owner of JET 1 Inc. (JET-1) in Paramount, California, dated October 23, 1993, stating that [REDACTED] whom [sic] are the same person has worked for me during the following periods: starting date March 17, 1981, ending date December 19, 1984; starting date November 23, 1986, ending date present time.”
- Employee’s statement of earnings from Prime Upholstery Manufacturing in Hawthorne, California, with handwritten notations for pay periods ending

February 8, 1985, April 19, 1985, June 21, 1985, August 30, 1985, October 25, 1985, and December 13, 1985, in the name of [REDACTED]

- Pay statements from Auto Transport Specialist Inc. in Paramount, California, for pay periods ending September 19, 1986 and October 17, 1986, in the name of [REDACTED]

Employee's pay statements from JET I Welding & Machinery (JET-1) in Paramount, California, with handwritten notations for the pay periods of February 23, 1987 to February 27, 1987; April 20, 1987 to April 24, 1987; and July 20, 1987 to July 24, 1987, in the name of [REDACTED]

- Monthly earnings statements from Belmont Manufacturing and Engineering in the name of [REDACTED] from August 1987 to November 1988.

A Form W-2, Wage and Tax Statement, for the year 1987 from [REDACTED] JET-I Welding (JET-1), Paramount, California, addressed to [REDACTED]

- A Form 1040, U.S. Individual Income Tax Return, and a Form 540A, California Short Tax Form, for the year 1987, both dated April 15, 1988 in the name of [REDACTED] California, listing his social security number as [REDACTED]

- Form 1040, U.S. Individual Income Tax Return, and Form 540A, California Short Tax Form, for the year 1988, both dated March 7, 1989 and signed by [REDACTED] California, listing his social security number as [REDACTED]

A student body identification card from [REDACTED] School in Norwalk, California, issued to the applicant for the 1986-87 school year.

An affidavit from [REDACTED] a resident of Los Angeles, California, dated October 25, 1993, stating that he drove the applicant to the bus station in Tijuana around September 10, 1987, to take a bus to Mexico City, and that when the applicant returned to the United States he called the affiant, who picked him up in San Diego, California, around October 12, 1987.

- A letter envelope addressed to the applicant at [REDACTED] Norwalk, Los Angeles, California, with an illegible postmark date on the front of the envelope and a postmark date of July 21, 1986, on the back of the envelope, from an individual in Puebla, Mexico.

On December 5, 2006, the applicant was issued a letter requesting that he submit documentation to establish his continuous residence in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The applicant was given 90 days to respond.

In response, the applicant submitted the following document:

- An affidavit from [REDACTED], a resident of [REDACTED] dated January 13, 2007, stating that he met the applicant in 1981, that the applicant lived in his home from 1981 to 1985, that the applicant worked as a welder at the time, that the applicant went to live and work in Reno, Nevada, in 1985 for approximately one year, that the applicant returned in 1986 and lived with him for about one and a half years, that he knew the applicant had a son in 1999 because he attended his baptism, and that he last saw the applicant in 2000.

In a Notice of Intent to Deny (NOID) the application for LIFE legalization, dated February 12, 2007, the director indicated that there was no documentation supporting the applicant's claim of United States residence from January 1, 1982 through 1984, that the documentation submitted by the applicant as evidence of his residence in the country from 1985 through 1988 is mostly under the name of [REDACTED], and that the applicant did not submit any verifiable evidence to establish that he and [REDACTED] are one in the same. The director concluded that the applicant had not established his continuous residence in the United States in an unlawful status from before January 1, 1981 through May 4, 1988. The applicant was granted 30 days to explain evidentiary discrepancies and rebut adverse information.

In response to the NOID counsel asserted that the applicant had submitted sufficient evidence to establish that he entered the United States in March 1981, that he continuously resided in the United States from 1981 through the statutory period ending on May 4, 1988, and that he and [REDACTED] are one and the same person. Counsel submitted one new document – another employment letter from JET-I.

The letter from [REDACTED], owner of JET-I, now located in Fontana, California, dated March 14, 2007, stated that the applicant was employed as a welder during the following periods: starting on March 17, 1981, ending on December 19, 1984; and starting on November 23, 1986, to the present time (2007). [REDACTED] stated that at the time the applicant started working for his company he was known as [REDACTED] and used the social security number [REDACTED] that around 1989 the applicant informed the company that his real name is [REDACTED] [REDACTED] not [REDACTED], and that the company updated its records by adding the name of [REDACTED] to the social security number [REDACTED] [REDACTED] further stated that he has no doubt the applicant is [REDACTED]

On April 13, 2007, the director denied the application, finding that the new documentation was insufficient to overcome the grounds for denial as stated in the NOID. On appeal, counsel

asserts that the director failed to give proper weight to the evidence submitted by the applicant. Counsel submits no additional documentation with the appeal.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that he has not.

The AAO's analysis begins with the employment letters from [REDACTED] owner of JET-I, dated October 23, 1993 and March 14, 2007. The letters do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i). In particular, they do not provide the applicant's address at the time of employment, do not declare whether the information was taken from company records, where the records are located and whether CIS may have access to the records. Nor do the letters describe the applicant's job duties except for a general reference in the second letter that he was a welder. Additionally, neither the applicant nor JET-I provided any **documentary records to** establish that the applicant worked for the company under the assumed name of [REDACTED] during the years indicated. Except for the handwritten pay statements dated in 1987, the applicant has not furnished any further earnings statements, pay stubs, tax returns, or other documentation of his employment in the years 1981-1984 and 1986-1988, when he claims to have worked for the company.

In addition, the letters from [REDACTED] are inconsistent with information provided by the applicant on Form G-325A, dated May 30, 2002, which was submitted with his Form I-485 application. While the letters from [REDACTED] stated that the applicant worked for JET-I from March 1981 to December 1984, and again from November 1986 to the present time, the applicant indicated on the Form G-325A that he started working for JET-I in 1986.

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 without competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

The earnings statements from Prime Upholstery Manufacturing dated in 1985, in the name of [REDACTED] are also handwritten with no other authenticating documentation from the company to verify the contents. Neither the applicant nor the company submitted documentation

to verify that the applicant worked under the assumed name of [REDACTED]. In a similar vein, the pay statements from Auto Transport Specialist, Inc. (1986) and the earnings statements from Belmont Manufacturing and Engineering, (1987-1988) in the name of [REDACTED] were not accompanied by any documentation from the applicant or from the companies indicating that the applicant worked under the assumed name of [REDACTED]. Furthermore, the applicant did not list either Auto Transport Specialist Inc. or Belmont Manufacturing and Engineering as an employer of his in the United States during the 1980s on the Form I-687 he filed in 1993. As previously indicated, doubt cast on any aspect of the applicant's evidence also reflects on the reliability of the applicant's remaining evidence. *See Matter of Ho, id.*

The copies of Form 1040, U.S. Individual Income Tax Return, and Form 540A, California Short Tax Form, for the years 1987 and 1988, listed the name of [REDACTED] as the taxpayer with residences at [REDACTED] Los Angeles, respectively, and two different social security numbers. The income tax returns for 1987 listed the taxpayer's social security number as [REDACTED] while the income tax returns for 1988 listed the taxpayer's social security number as [REDACTED]. The income tax returns appear to be fraudulent for the following reasons: (1) On the Form I-687 he completed on November 23, 1993, the applicant did not list the address on either tax return as one of his addresses in the United States during the 1980s. (2) [REDACTED] claimed four dependents – a wife and three children – on his 1987 and 1988 tax returns, whereas the record shows that the applicant's first child was born in the United States in September 1999. (3) On his Form I-687 in 1993 the applicant indicated that he had used two social security numbers in the United States – [REDACTED]. He did not claim [REDACTED] as one of the numbers he used.

The evidentiary discrepancies noted above cast doubt on the applicant's claim that he is David Hernandez, and undermine his claim to have resided continuously in the United States from before January 1, 1982 through May 4, 1988.

The only other evidence in the record of the applicant's residence in the United States from before January 1, 1982, is the affidavit from [REDACTED] dated January 13, 2007. The affidavit provides no details about how [REDACTED] met the applicant in 1981, however, and does not identify the address where he claims to have resided with the applicant from 1981-1985, and in 1986-1987. [REDACTED] does not identify the applicant's employer(s) during the 1980s, stating only that he was a welder at that time. Considering how long he claims to have known the applicant, [REDACTED] provides remarkably little information about the applicant's life in the United States and his interaction with the applicant over the years. Nor is the affidavit accompanied by any documentary evidence from [REDACTED] or the applicant – such as photographs, letters, and the like – of their personal relationship in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the affidavit has little probative value. It is not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

Finally, while the letter envelope with a postmark date of July 1986, and the student body identification card from the Norwalk-La Mirada Adult School in Norwalk, California, may indicate that the applicant resided in the United States in 1986 and 1987, they do not demonstrate that he had resided in the country in prior years, much less before January 1, 1982.

Based on the foregoing analysis of the evidence, the AAO determines that the applicant has failed to establish that he entered the United States before January 1, 1982 and 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. Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

The appeal will be dismissed, and the application denied.

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