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MAIL STOP 2090



**U.S. Citizenship  
and Immigration  
Services**

L2



FILE:



MSC 02 212 61306

Office: CHICAGO

Date:

**NOV 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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied, re-opened, and denied again by the Director, 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 had entered the United States before January 1, 1982, and had resided continuously in an unlawful status in the United States from then through May 4, 1988.

On appeal, counsel for the applicant submits a brief.

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 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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). *See* 8 C.F.R. 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.12(f). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

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 regulation at 8 C.F.R. § 245a.2(d)(3)(v), states that attestations from churches, unions or other organizations should: identify the applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where the applicant resided during the membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

The applicant filed a Form I-485, Application to Register Permanent Resident Status or Adjust Status, under the LIFE Act on April 30, 2002. On May 14, 2007, the director denied the application. The applicant filed a timely appeal from that decision on June 5, 2007.

The issue in this proceeding is whether the applicant has demonstrated that he continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.<sup>1</sup>

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<sup>1</sup> The AAO maintains plenary power to review this matter 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 federal courts have long recognized the AAO's *de novo* review authority. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The record reflects that the applicant has provided various credible documents establishing his presence in the United States from 1989 forward. In an attempt to establish his entry into the United States prior to January 1, 1982, and his continuous unlawful residence in the United States from that date through May 4, 1988, he has provided the following documentation:

Church Letters:

- A letter from [REDACTED] of St. Agnes Church in Chicago stating that although the applicant is not a registered member, he has been a regular church-goer since 1981.  
A letter from [REDACTED] stating that he met the applicant in January 1988 at Mass at the Epiphany Church in Chicago, Illinois.

Employment Letters:

- A letter from [REDACTED], of the Coronado Country Club in El Paso, Texas, stating that the applicant worked at La Margarita Mexican restaurant in Bolingbrook, Illinois, from 1981 through 1984 while he ([REDACTED]) was a general manager.
- Letters and affidavits from [REDACTED] of Lewisville, Texas, stating that he had known the applicant since 1981 and that the applicant worked for him at "Salvador's Mexican Restaurants" from August 1981 until 1997 - first as a musician, in 1990 as a busboy, and later as a waiter.  
Letters from [REDACTED] and [REDACTED] stating that they had known the applicant since 1985 when they met him at Salvador's Mexican Restaurant; a letter and a fill-in-the-blank affidavit from [REDACTED] stating that he had known the applicant since 1981 when they worked together at Salvador's Mexican Restaurants; a letter from [REDACTED] stating that he had known the applicant since 1983 when they worked together at Salvador's Mexican Restaurants; and a letter from [REDACTED] stating that he met the applicant at Salvador's Mexican restaurant in 1986.

Residence Letters:

- Letters and affidavits from [REDACTED], stating that she had known the applicant since 1981 when he rented a room from her father, [REDACTED], and that when she moved from her father's house in 1986, the applicant was still living in the house. Ms. [REDACTED] also states that she worked at Salvador's Mexican Restaurant from 1987 to 1989 during which time the applicant also worked at the restaurant as a waiter.
- Fill-in-the-blank letters that are neither dated nor notarized, from [REDACTED] and [REDACTED] stating that they had known the applicant since 1981.

Other Documentation:

- A letter from [REDACTED] stating that the applicant had been her customer at Supermercado La Justicia in Chicago since September 1986.

The letters from [REDACTED] and [REDACTED] attest only to the applicant's presence in the United States in or after September 1986. The letter from [REDACTED] is not notarized and does not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(v) in that it does not establish how the author knows the applicant and the origin of the information being attested to.

The employment letter from [REDACTED] does not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i) in that it fails to 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. Furthermore, the applicant did not list any employment at La Margarita Mexican Restaurant on his Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act), submitted in or about July 1990, nor has he ever noted that employment anywhere else in the record. The employment letters and affidavits from [REDACTED] also fail to declare whether the information provided 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.

Finally, the affiants noted above do not state in detail how they first met the applicant in the United States, or how frequently and under what circumstances they saw the applicant during the requisite period. The documents provide little information for concluding that the affiants had direct and personal knowledge of the events and circumstances of the applicant's entry and residence in the United States throughout the requisite time period; as such, they can only be afforded minimal evidentiary weight.

In summary, the applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), no hospital or medical records that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv), and no church letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(v). The applicant also has not provided documentation (including, for example, money order receipts, passport entries, children's birth certificates, dated bank book transactions, letters of correspondence, a Social Security card, automobile contract, insurance documentation, tax receipts, insurance policies, or letters according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (K). The documentation provided by the applicant consists solely of third-party affidavits ("other relevant documentation") that lack details and are of minimal evidentiary weight.

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).

Based on the documentation submitted, it is concluded that the applicant has failed to establish, by a preponderance of the evidence, that he entered the United States before January 1, 1982, and maintained continuous unlawful residence since such date through May 4, 1988, as required for eligibility for adjustment of status to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Thus, 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.