



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

consolidated herein]
consolidated herein]

Office: NEW ORLEANS (MEMPHIS, TN)

Date:

SEP 02

MSC 02 226 61018

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. 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.

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, New Orleans, Louisiana. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The district 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 the United States from then through May 4, 1988.

On appeal, counsel for the applicant submits a brief and resubmits photocopies of documentation previously provided.

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, and 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 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.13(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 applicant filed a Form I-485, Application to Register Permanent Resident Status or Adjust Status, under the LIFE Act on May 14, 2002. On September 15, 2006, the district director denied the application. The applicant filed a timely appeal from that decision on October 13, 2006.

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 from before January 1, 1982 through May 4, 1988.

The record reflects that the applicant has submitted the following documentation in an attempt to establish his continuous unlawful residence in the United States during the requisite time period:

Employment letter

- A letter, dated May 1, 1990, from [REDACTED] of Sandy Hill Farm in Tyler, Texas, stating that the applicant was employed planting and harvesting truck crops, mainly onions, from February 1981 to August 1989.

Affidavits from relatives and acquaintances

- An undated, un-notarized affidavit signed by [REDACTED] of Memphis, Tennessee, stating that he knew the applicant in Mexico, and that when he came to the United States in 1977, he saw the applicant not too long after his (Mr. [REDACTED]) arrival ("around 1979, but not later than 1981") and that they would see each other periodically in Texas where [REDACTED] was living at the time. Mr. [REDACTED] states that the applicant would often be in the company of his brothers, [REDACTED] and [REDACTED].

- An undated, un-notarized affidavit signed by [REDACTED] of Memphis, Tennessee, stating she knew the applicant in Mexico and that when she came to the United States in 1982 and settled in Dallas, Texas, the applicant was already there. She saw him when she visited his brothers, [REDACTED] and [REDACTED] about every week or so in Houston.
- An affidavit, notarized on August 14, 2006, from the applicant's sister, [REDACTED] of Garland, Texas, stating that when she first came to the United States in 1985, her brothers - the applicant, [REDACTED] and [REDACTED] - were already living in Dallas. She states she is not sure in what order her brothers arrived in the United States, but knows that the applicant came prior to 1981 - that "he had been gone [from Mexico] for more than a few years before [she] decided to join him." [REDACTED] further states that the applicant would visit Mexico about once every two to three years, stay for a few weeks and return to the United States.
- An affidavit, notarized on August 20, 2006, from the applicant's brother, [REDACTED] of Memphis, Tennessee, stating, in part, that he first came to the United States in 1977 and that the applicant was already in the United States when he arrived.
- A letter, dated May 10, 1990, from [REDACTED] of Dallas, Texas, stating she met the applicant through a mutual friend, they became friends, and she has personal knowledge the applicant resided continuously in the United States since August 1989.
- An affidavit, dated August 29, 2006, from [REDACTED] of Millington, Tennessee, stating, in part, that he first saw the applicant in Dallas, Texas, "around 1987," and that the applicant had been in the United States "quite some time before [REDACTED] saw him."

Other documentation

- Photocopies of an envelope (showing the applicant with a return address in Dallas, Texas), postmarked June 24, 1986, and photocopies of letters written by the applicant to his wife, dated in or after 1985.

The employment letter from [REDACTED] is not notarized and does not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i) in that it fails to identify the exact period of employment; show periods of layoff; and declare whether the information was taken from company records, 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 affidavits from [REDACTED] and [REDACTED] are not dated, are not notarized, and do not include

identifying documentation, or evidence of the affiants residences in the United States at the time the statements were made, 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. [REDACTED] and [REDACTED] provide little information for concluding that they had direct and personal knowledge of the events and circumstances of the applicant's residence in the United States. As such, their affidavits can only be afforded minimal weight as evidence of the applicant's residence and presence in the United States throughout the requisite period. The only other affidavits attesting to the applicant's presence in the United States prior to January 1, 1982, are from his sister and brother.

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 credible school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), and no hospital or medical records that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv). 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 of third-party affidavits ("other relevant documentation") from relatives or affiants that significantly lack details and are of minimal probative value.

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 (5th ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

Based on the documentation submitted (primarily the envelopes and letters, noted above), it is determined that the applicant has established his presence in the United States in or after 1985. However, 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.