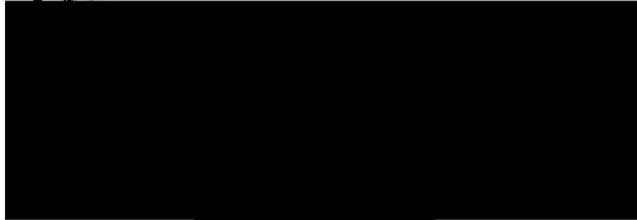




U.S. Citizenship
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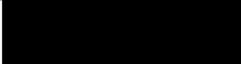
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FILE:



Office: CHICAGO

Date:

SEP 03 2008

MSC-03-066-60881

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:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under section 1104 of the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Chicago. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The application was initially denied on September 26, 2006 because the applicant purportedly failed to respond to the director's request for additional evidence. The applicant then filed, through counsel, a motion to reopen with evidence that he timely responded to the request for evidence. Accordingly, on January 24, 2007, the director reopened *sua sponte* his application. The application was later denied as abandoned on November 1, 2007 because the applicant failed to appear for fingerprinting. The notice of denial refers to a March 8, 2006 notice for the applicant to appear for fingerprinting at a Citizenship and Immigration Services (CIS) Application Support Center. The applicant filed, through counsel, a notice of appeal asserting that he appeared for his biometrics appointment in March 2006. A Federal Bureau of Investigation report in the applicant's record shows that he appeared for fingerprinting on March 18, 2006. Therefore, the applicant has overcome the basis for the director's denial.

On June 19, 2008, the AAO issued a notice to the applicant to inform him that during the adjudication of his appeal, information came to light that seriously compromises the credibility of his claims. The notice indicates that the AAO intends to dismiss his appeal based upon this information. Pursuant to CIS regulations at 8 C.F.R. § 103.2(b)(16)(i), the AAO notified the applicant of this derogatory information and afforded him a period of 30 days to respond. However, the applicant failed to provide a statement or any additional evidence to contest the AAO's findings.

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 and through May 4, 1988. *See* Section 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 under the provisions of Section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation and its credibility and amenability to verification. 8 C.F.R. § 245a.12(e).

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).

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 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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States from prior to January 1, 1982 through May 4, 1988. Here, the applicant has failed to meet this burden.

The record shows that on December 5, 2002, the applicant filed with CIS a Form I-485, Application to Adjust Status, under section 1104 of the LIFE Act. The applicant submitted the following documents as corroborating evidence:

- A letter from [REDACTED] Executive Director, [REDACTED], dated March 12, 2007. This letter states, "Mr. [REDACTED] was enrolled in the Adult Educational Program of Casa Aztlan and City Colleges of Chicago since May 1984 and 1985." This letter does not indicate that [REDACTED] referred to the applicant's school records and/or other documentation of his enrollment and attendance. It is reasonable to expect such information since this letter is written over twenty years after the applicant purportedly attended classes at Casa Aztlan. Given this deficiency, this letter is of little probative value as evidence of the applicant's residence in the United States from 1984 until 1985.
- A letter from [REDACTED] dated September 9, 2003. This letter states, "I have known [REDACTED] since the year 1980. During the years of 1980 thru 1987 he rented from me." This letter does not provide any information on the applicant's first acquaintance with [REDACTED]. Notably, the letter does not indicate that [REDACTED] first met the applicant in the United States. Furthermore, the letter does not provide the address of the property the applicant rented from Mr. Herrera. Additionally, the applicant submitted with his application copies of numerous receipts as evidence of his rental payments to [REDACTED]. These receipts, dated March 1983, January 1984, May 1985 and August 1986, state that they are issued for the rent of the "second floor." However, there is no information on these receipts to show the address where the applicant rented the second floor of the property. Given these numerous deficiencies, the letter and receipts are without any probative value as evidence of the applicant's continuous residence in the United States from 1980 until 1987.

- A letter from [REDACTED], Adult Education Coordinator, Richard J. Daley College, dated September 2, 2003. This letter states, "I have known [REDACTED] for many years. [REDACTED] resided at [REDACTED] back in the early 1980's in Chicago, Illinois. He has worked as a roofer Several years later he is enrolled in the Adult Education Program at Richard Daley College." This letter contains no information on [REDACTED] direct personal knowledge of the applicant's continuous residence in the United States during the requisite period. The letter is vague as to the year that the applicant and [REDACTED] first met. It states that [REDACTED] has known the applicant for "many years" without specifying the number of years. Additionally, the letter states that the applicant was enrolled at Richard Daley College "several years latter [sic]." Again, this does not specify the time period during which the applicant was enrolled at this college. Nor does it state the origin of the information attested to. Given these significant deficiencies, this letter is of no probative value as evidence of the applicant's residence in the United States during the requisite period.
- A letter from [REDACTED], dated August 28, 2003. This letter states, "I have known Mr. [REDACTED] for many years. I know that [REDACTED] lived in 1980 at [REDACTED] California, Chicago, Illinois. [REDACTED] continued living there for many more years. Since I am a roofer, I used to go there and pick him up whenever we needed some workers." This letter states that [REDACTED] has known the applicant for "many years" without specifying the number of years. Additionally, the letter states that [REDACTED] came to the applicant's residence in Chicago, Illinois when he needed workers. However, it gives no information on the time period during which this occurred. He failed to indicate how and where he met the applicant and how he dated their acquaintance. Therefore, this letter is deficient because it is without any probative value as evidence of the applicant's residence in the United States during the requisite period.
- Four original photographs, which the applicant states are pictures of himself in Chicago. The applicant indicated on these photos that three were taken in 1982 and one was taken in either 1984 or 1985. The reliability of the date of these photos is based on the applicant's memory alone. There is no evidence that the photos were dated stamped upon the date they were taken or developed. Therefore, these photos are of little probative value as evidence of the applicant's residence in the United States during the requisite period.
- A letter from [REDACTED] undated, which provides, "the above mentioned applicant has [sic] known to me personally por [sic] the period of 6 years and for the period of time from the year 1987, and 1992 [sic]. [REDACTED] did live in my hause [sic], [REDACTED] in Chicago, Illinois 60608." The applicant submitted copies of Rediform rent receipts purportedly issued to him from [REDACTED], dated September 1, 1988, October 1, 1988, November 1, 1988, January 1, 1989, February 1, 1989, March 1, 1989, January 1, 1990 and February 1, 1990. These receipts are of questionable authenticity because of issues with their serial numbers. The receipts dated September 1, 1988 and October 1, 1988 bear the same serial number 7401. The receipts dated November 1, 1988 and January 1, 1989 and February 1, 1989 bear the same serial number [REDACTED]. The receipts dated March 1, 1989, January 1, 1990 and February 1, 1990 bear the same serial number [REDACTED]. These dates are outside the relevant requisite period of residence in the United States. Nevertheless, the discrepancies are relevant because they undermine the credibility of the applicant's documentation.

The applicant's record shows a Form I-687 application and a worksheet, dated August 28, 1992. The applicant completed these documents for a determination of his class membership in *CSS v. Meese*. At part #33 of the application, where applicant's were asked to list their residences in the United States since their first entry, the applicant showed that he resided at [REDACTED]

Chicago, Illinois from October 1980 until present. The applicant appeared for an interview to assess his eligibility for class membership on October 27, 1992. During his interview he testified that he has two children, [REDACTED] and [REDACTED] who were born in Mexico in 1986 and 1984 respectively. Notably, the applicant did not include these children on his Form I-485 application. This omission draws into question the credibility of the applicant's claim of continuous residence in the United States from prior to January 1, 1982 through May 4, 1988.

The applicant submitted with this application the following documents:

- An affidavit from [REDACTED], dated April 9, 1992, which provides, "[REDACTED] residing at [REDACTED] Chicago, Il [sic] U.S.A., does hereby state and affirm that Mr. [REDACTED] has been personally known to me since the year of 1980 and did live with me from the year 1980 to the year of 1987 at this present address an [sic] apartment house owned by me." The record shows that during the applicant's interview on October 27, 1992, he testified that he never resided at this address. This testimony undermines the credibility of the applicant's claim of continuous residence in the United States during the requisite period.

Copies of three envelopes addressed to the applicant bearing postage stamps from Mexico. Two of these envelopes are addressed to the applicant at [REDACTED] Chicago, Illinois. However, the applicant has not listed this address as his residence in the United States on his Form I-687 application. Furthermore, the postmarks on all three envelopes are faded and illegible. Therefore, they are of without any probative value as evidence of the applicant's residence in the United States during the requisite period.

The AAO issued a notice to the applicant on June 19, 2008 informing him that it was the AAO's intent to dismiss his appeal based upon the fact that he has not established by a preponderance of the evidence his continuous residence in the United States for the duration of the requisite period. The notice informed the applicant of the deficiencies in his evidence and granted him a period of 30 days to contest the AAO's findings. The notice indicated that the applicant must offer substantial evidence from credible sources addressing, explaining, and rebutting the deficiencies described above. The notice indicated that if the applicant did not submit such evidence within the allotted 30 day period, the AAO would dismiss his appeal. As of the date of this decision, the applicant has failed to submit a statement, brief, or evidence addressing the deficiencies in his claim of residence in the United States during the requisite period.

The absence of sufficiently detailed and consistent supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this claim. Pursuant to 8 C.F.R. § 245a.13(e), 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 of minimal probative

value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from before January 1, 1982 through May 4, 1988 as required under both Section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under the LIFE Act on this basis.

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