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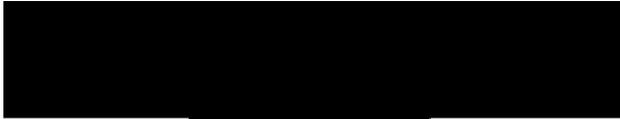
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: CHICAGO

Date:

SEP 18 2008

MSC 02 131 61431

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.

Robert R. Wieman, 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, Chicago, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

On appeal, counsel asserts that the director failed to consider all of the evidence submitted by the applicant as required by 8 C.F.R. § 245a.12(f). Counsel provides copies of previously submitted evidence for consideration and provides additional affidavits and updated affidavits that include current phone numbers for previous affiants.

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 amenability to verification. 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 in support of his or her application, the regulations also permit the submission of affidavits and any other relevant document. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The issue in this proceeding is whether the applicant has submitted sufficient credible evidence to prove that he entered the United States on a date before January 1, 1982 and then resided continuously in an unlawful status since that time and for the duration of the requisite period. Here, the applicant has not met this burden.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to Citizenship and Immigration Services (CIS) on December 29, 2005. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant indicated his addresses in the United States during the requisite period were all in Chicago as follows: [REDACTED] from September 1981 to September 1984; [REDACTED] from October 1984 to January 1985; [REDACTED] from February 1985 to January 1986; [REDACTED] from January 1986 to September 1986; and [REDACTED] from September 1986 to 1990. At part #31, the applicant indicates that he has been affiliated with St. Francis of Assisi Church from 1981 to the present. At part #32 where the applicant was asked to list all of his absences from the United States, he indicated that he had one absence during the requisite period, when he went to visit family in Mexico from June 14, 1987 to July 12, 1987. At part #33, where the applicant was asked to list all of his employment in the United States since he first entered, he stated that he was employed as follows during the requisite period: as a part time driver for Airways Rent a Car from January 1983 until September 1985; as a full time driver for that company from September 1985 until September 1986; as a dishwasher for The 3rd Coast from October 1986 until December 1986 and then again from July 1987 until October 1987; as a driver for [REDACTED] and Company from January 1987 until June 1987 and then as a driver and a supervisor for this company from October 1987 until 1992.

The record also contains a Form I-687 submitted on July 16, 1990. The applicant stated his employment in the United States and his absences from the United States consistently with what he indicated on his subsequently filed Form I-687. However, part #33 of this application indicates that the applicant resided on [REDACTED] from October 1984 until August 1986 and does not indicate that he ever resided on either [REDACTED] or [REDACTED]. Further, at part #34 of this application, where the applicant was requested to list all of his affiliations and associations with clubs, organizations, unions and churches, the applicant stated that he had no such affiliations or associations. It is also noted that the applicant stated on this form that he had two children born in Mexico during the requisite period. He stated that his first daughter, [REDACTED] was born in 1983 and that his second daughter, [REDACTED] was born in Mexico in 1985.

Further in the record is a Form G-325A Biographic Information that the applicant submitted on May 18, 2002 with a Form I-485. On the Form G-325A, the applicant indicated that he was married on December 17, 1982 in Mexico. This indicates that the applicant was absent from the United States on that date. This not consistent with the applicant's claimed absences from the United States on his previously noted Form I-687, where he indicated that his only absence was in 1987. Because his testimony regarding his absences during the requisite period to CIS has not been consistent, doubt is cast on whether the applicant has accurately represented the dates and details regarding all of his absences from the United States to CIS.

Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. 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 unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The regulation at 8 C.F.R. 245a.12(f) states in pertinent part that to met his or her burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. In this case, the applicant submitted the following evidence that is relevant to his claim that he resided continuously in the United States for the requisite period prior to the director's Notice of Intent to Deny (NOID) that was issued on November 30, 2005:

1. An affidavit from [REDACTED] that was notarized on July 25, 2003. The affiant states that he owns G.V. Jewelry and that the applicant has been his client for 16 years. He states that the applicant resided at North Wolcott in Chicago from September 1987 until December 1987.
2. A letter from [REDACTED] who represents Kass Management Service, Inc. This letter is dated July 30, 2003. Ms. [REDACTED] indicates that the applicant resided at [REDACTED] in a basement apartment from January 1987 until December 1989.
3. Photocopies of Rent a receipt document that indicates that the applicant, [REDACTED] paid rent for a residence on either [REDACTED] or [REDACTED] on January 27, 1987.
4. A photocopy of a 1986 Form W-2 issued to the applicant on [REDACTED] in Chicago by a Rent-A-Car company. The full name of this company is not legible on this photocopy. It is noted that though the applicant indicated that he resided at this address in 1986 on his Form I-687 submitted in 2005, he did not indicate that he had ever resided at this address on his Form I-687 submitted in 1990.
5. A photocopy of an unsigned Form 1040A for the year 1986. This Form 1040A indicates that it is for both the applicant and his wife who reside on [REDACTED] in Chicago. It is noted that though the applicant indicated that he resided at this address in 1986 on his Form I-687

submitted in 2005, he did not indicate that he had ever resided at this address on his Form I-687 submitted in 1990.

6. A Mexican Identity Card bearing the applicant's name. This card is date stamped August 26, 1985 and indicates that the applicant resides at [REDACTED] in Chicago, Illinois. This card was issued by the Consulate General of Mexico in Chicago, Illinois. It is noted that though the applicant indicated that he resided at this address in 1986 on his Form I-687 submitted in 2005, he did not indicate that he had ever resided at this address on his Form I-687 submitted in 1990.
7. An original lease for a residence at [REDACTED] in Chicago. The lease is dated January 31, 1985 and it is for February 1, 1985 until January 31, 1986. It is noted that though this address of residence appears on the applicant's Form I-687 submitted pursuant to the CSS/Newman Settlement Agreements in 2005, the applicant did not indicate that he had ever resided at this address on his Form I-687 submitted in 1990. It is also noted that the applicant submitted an affidavit from his brother that was notarized on July 16, 1990 that states that the applicant resided with him on [REDACTED] from October 1985 until August 1986. This affidavit will be noted subsequently.
8. A photocopy of a Form 1040A for 1987. Though this Form is dated April 14, 1988, the applicant did not sign this form.
9. Income Tax refund documents issued to the applicant for the year 1988.
10. A Form 3911, Taxpayer Statement Regarding Refund for the year 1988, completed by the applicant and signed on July 3, 1989.
11. Documents from the Illinois Department of Revenue issued in March 1988. These documents are addressed to [REDACTED] and shows that individual's earnings for the year ending on December 1986. It is not clear whether these earnings are associated with the applicant, [REDACTED] or with his wife, [REDACTED].
12. A letter from the applicant who indicates that he is writing to the Department of Treasury's Internal Revenue Service to determine if that department has his refund checks for the years 1986 and 1987. This letter is dated August 9, 1988.
13. An affidavit from [REDACTED] that is dated May 17, 2002. The affiant states that she has known the applicant since 1981 and that she knows that the applicant has resided in the United States since 1981. However, the affiant does not state the frequency with which she saw the applicant during the requisite period or whether there were periods of time when she did not see the applicant during the requisite period. Because this affidavit is significantly lacking in detail, it can be accorded minimal weight as evidence that the applicant resided in the United States for the duration of the requisite period.

14. An affidavit from [REDACTED] that was notarized on May 17, 2002. The affiant states that he has known the applicant since 1981. However, he does not state where he met the applicant or whether he met him in the United States. He does not state that he personally knows that the applicant ever resided in the United States. Therefore, this affidavit carries no weight as evidence that he did so.
15. An affidavit from [REDACTED] that was notarized on July 16, 1990. The affiant states that the applicant is his brother and asserts that the applicant left the United States from June 14, 1987 until July 12, 1987.
16. An affidavit from [REDACTED] that was notarized on June 20, 1990. The affiant states he knows that the applicant has resided in the United States since 1981. However, the affiant does not state when or where he first met the applicant or whether he first met him in the United States. He further fails to indicate the frequency with which he saw the applicant in the United States during the requisite period or whether there were periods of time during the requisite period when he did not see the applicant. This affiant states that the applicant resided on North Magnolia at the time he submitted this affidavit. However, it is noted that the applicant stated on his Form I-687 submitted in July 1990 that in June, 1990 he resided on West Gunnison, having ended his residence on North Magnolia in 1984.
17. An affidavit from [REDACTED] that was notarized on June 15, 1990. The affiant states that the applicant has resided in the United States since 1981. However, the affiant does not state when or where he first met the applicant or whether he first met him in the United States. He further fails to indicate the frequency with which he saw the applicant in the United States during the requisite period or whether there were periods of time during the requisite period when he did not see the applicant. The affiant states that the applicant resided on [REDACTED] in Chicago at the time he submitted this affidavit. However, it is noted that the applicant stated on his Form I-687 submitted in July 1990 that in June, 1990 he resided on West Gunnison, having ended his residence on North Magnolia in 1984.
18. An employment affidavit from [REDACTED] that was notarized on July 9, 1990. The affiant states that the applicant was employed by her from January 1987 until June 10, 1987 and then from October 15, 1987 until the date she signed the affidavit. She states that there were no periods of layoff and that the applicant was employed as a driver. She states that no official records were kept and that the applicant was paid in cash.
19. An affidavit from an individual whose name is not legible from the 3rd Coast. This affidavit was notarized on July 5, 1990 and states that the applicant worked for the 3rd Coast from October 15, 1986 until December 15, 1986 and then again from July 15, 1987 until October 15, 1987. The affidavit states that the applicant had no periods of layoff and was employed as a dishwasher. The affidavit further states that there are no official records available and that employees were paid in cash.

20. Two affidavits from [REDACTED] that were notarized on July 17, 1988 and July 16, 1990. The affiant states that the applicant began residing in his house in September of 1981 when he was 16 years old. He states that he provided the applicant with housing, food and economic support from the time the applicant entered. In the July 16, 1990 affidavit, he states that he resided with his brother on Magnolia from September 1981 until September 1984 and that they then moved together to [REDACTED] where they resided from October 1984 until August 1986. He goes on to say that the applicant worked for Airways Rent a Car from January 1983 until September 1986 but that he and his other brother, [REDACTED] helped the applicant from 1981 until 1985. It is noted that the applicant has stated on his Form I-687 submitted in 2005 that he resided on [REDACTED] from February 1985 to January 1986 and then on [REDACTED] from January 1986 until September 1986. The applicant has also submitted evidence, including a lease for [REDACTED] that was allegedly signed in January 1985 as proof of his residence at that address. These inconsistencies cast doubt on the applicant's residence in the United States during the requisite period.
21. An employment affidavit from Airways Rent a Car that was notarized on June 27, 1990 and was signed by [REDACTED] who indicates that he was the president of the company. The affidavit states that the applicant worked for Airways Rent a Car from January 9, 1983 until September 1985 part time and that he also worked for them from September 1985 to September 1986 full time. The affiant states that there were no periods of layoff and that the applicant was employed as a driver when he worked for the company. He states that the company has no official records and that the information in the affidavit is from his memory.
22. A lease for an apartment located at [REDACTED] that was signed by the applicant. This document indicates that the lease was from September 1, 1986 to August 31, 1987.
23. An electric bill from Commonwealth Edison that indicates that the applicant paid an electric bill to a United States company on July 27, 1987.

Though it is noted that the applicant submitted evidence of his residence in the United States subsequent to the requisite period, the issue in this proceeding is whether the applicant has submitted sufficient evidence to satisfy his burden of proving that he resided in the United States for the duration of the requisite period. As this evidence does not pertain to the requisite period, it is not relevant to the matter at hand. Therefore, it is not discussed here.

The director issued a Notice of Intent to Deny (NOID) to the applicant on December 19, 2003. In the NOID, the director stated that though the applicant submitted evidence in support of his claim that he maintained continuous residence and continuous physical presence in the United States for the requisite period, this evidence did not satisfy his burden of proof. The director granted the applicant 30 days within which to submit additional evidence in support of his application.

The director denied the application on February 10, 2004. In his decision, the director reiterated that the evidence submitted by the applicant did not allow him to satisfy his burden of proof.

Counsel for the applicant filed a Motion to Reopen (MTR) the application on September 29, 2005. In this MTR, Counsel states that the applicant passed his LIFE examination on June 24, 2003 and that he was then mailed a request for evidence in which he was asked to submit additional evidence in support of his claim that he maintained continuous residence in the United States for the duration of the requisite period. At that time, the applicant was granted 90 days within which to submit this additional evidence. Counsel asserts that this evidence was received by CIS on August 8, 2003. Counsel states that her office failed to receive a decision regarding the applicant's case and states that the applicant, similarly, failed to receive correspondence regarding his case. Because of this, Counsel sent an inquiry regarding the application on October 11, 2004. In response to this, Counsel received a notice that the application had been denied on July 17, 2005. Counsel notes that 8 C.F.R. § 245a.20(a)(2) requires that applicants be informed of a director's intent to deny the application before the final decision is issued. Counsel asserts that neither her office nor the applicant received the NOID or the director's decision, despite informing CIS of updated addresses. Because of this, counsel requests that additional documents in support of the application be considered. This evidence has been noted previously.

On November 30, 2005, the director re-opened the application to allow the applicant to respond to the NOID issued on December 19, 2003. The director re-issued the NOID on November 30, 2005. In this re-issued NOID, the director informed the applicant that the evidence he had submitted did not satisfy his burden of proof. The director informed the applicant that he had 30 days from the date of the re-issued NOID within which to submit additional evidence in support of his application.

In response to the re-issued NOID, the applicant submitted previously submitted documents, and also submitted the following new evidence that is relevant to the requisite period:

- A brief submitted by counsel that is dated December 23, 2005. Counsel states that the evidence submitted by the applicant is sufficient to satisfy his burden of proof. Counsel asserts that though the applicant submitted a lease from Kass Realty Group that indicated that he resided at an apartment on North Walcott from September 1, 1986 until August 31, 1987 and also submitted a letter from that same company that indicates that he resided at that address beginning in January 1987, this does not indicate an inconsistency. Counsel argues that this must indicate that the records of that company must not exist for 1986. However, counsel fails to produce evidence in support of this assertion.
- A declaration from Krinos, a specialty foods importer that is signed by _____ who indicates that she is the General Manager. This declaration is dated December 14, 2005. The declarant states that she has known the applicant since the end of 1981, when he came to inquire about employment at the company. She states that though there were no job openings at that time, the applicant continued to return periodically to inquire if there were job openings. The affiant fails to indicate how she is able to determine the year that the applicant first inquired about employment with her company or to state the frequency with which he returned to inquire about employment subsequent to that time. The affiant states that she

began to know the applicant well when he worked for Kathy Kingston and Company from 1987 until 1992.

- A declaration from [REDACTED] that is dated December 14, 2005. The declarant states that he has known the applicant for more than 20 years. He states that he worked with the applicant from 1987 to 1991 at [REDACTED] and Company.
- A declaration from [REDACTED] of C.E. Zuercher Company that is dated December 14, 2005. The declarant states that he first met the applicant in 1987 when he worked for [REDACTED] Company.
- A declaration from [REDACTED] who indicates that he is the Pastor of the St. Francis of Assisi Church. This declaration is dated December 8, 2005. The declarant states that the applicant has been a parishioner in his church from 1981 until the present. It is noted that though the applicant indicated that he was a member of this church on his Form I-687 submitted in 2005, he did not indicate that he had ever been a member of any churches when he submitted his Form I-687 in 1990. Further, the declarant does not indicate the frequency with which the applicant attended church services, whether there were periods of time when the applicant did not attend these services or how he was able to determine the applicant's start date as a parishioner at the church.

The director denied the application for the second time on February 21, 2006. In his decision, the director noted the additional evidence submitted by the applicant in response to the NOID, however, he stated that the applicant did not submit updated contact information for affiants who had previously submitted affidavits and declaration. The director stated that CIS was not able to contact affiants from whom the applicant submitted affidavits to verify information in those affidavits. The director stated that the applicant continued to fail to satisfy his burden of establishing that he resided continuously in the United States for the duration of the requisite period.

On appeal, the applicant submits a brief through counsel that is dated March 17, 2006 and submits additional affidavits in support of his application as well as updated contact information for affiants. In her brief, counsel reiterates the contents of previously submitted evidence and asserts that this evidence allows the applicant to satisfy his burden of proving that he resided continuously in the United States for the duration of the requisite period.

Details of additional evidence submitted with the applicant's appeal are as follows:

- An affidavit from [REDACTED] that was notarized on March 15, 2006. The affiant states that he himself has resided in the United States since 1981. He asserts that the applicant is his brother, and that he began to reside in the United States since late 1981. He asserts that he and other family members supported the applicant until the applicant gained his economic independence.

- An affidavit from [REDACTED] that was notarized on March 15, 2006. The affiant states that he knows that the applicant has resided in the United States since 1981.
- An affidavit from [REDACTED] that was notarized on March 15, 2006. The affiant states that the applicant has resided in the United States since 1981. He states that the applicant is his brother and that he has known the applicant all of his life. He states that he provided the applicant with economic support and shelter after his arrival and until he gained economic independence.
- An affidavit from [REDACTED] that was notarized on March 15, 2006. The affiant states that he has known the applicant since 1981 and that the applicant has resided continuously in the United States since that time.

The AAO has reviewed the evidence submitted by the applicant in support of his claim that he maintained continuous residence in the United States for the duration of the requisite period and has found that he has failed to satisfy his burden of proof. The applicant's two Forms I-687 are not consistent regarding his addresses of residence during the requisite period. Further, the applicant indicated on his Form G-325A Biographic Information submitted on May 18, 2002 with his Form I-485 states that he was married in Mexico in 1982. However, the applicant did not represent this absence to CIS on either of his Forms I-687. This casts grave doubt on whether the applicant has fully disclosed his presence in and absences from the United States during the requisite period. Though the applicant submitted affidavits and contemporaneous evidence in support of his application, many of the affiants do not indicate the frequency with which they saw the applicant during the requisite period or state whether there were periods of time during the requisite period when they did not see the applicant. Further, though the applicant stated on his 2005 Form I-687 and then also submitted evidence with that application including an original lease indicating that he resided on [REDACTED] from February 1985 to January 1986 and then on [REDACTED] from January to September of 1986, his Form I-687 submitted in 1990 does not indicate that he ever resided at either of these residences. The affidavit from the applicant's brother, [REDACTED] that was notarized on July 16, 1990 also states that the applicant resided on North Ashland with him from October 1984 until August 1986. Similarly, though the applicant stated that he had been a member of the St. Francis of Assisi Church since 1981 and also submitted a declaration from the pastor of that church that states that he has been a member of the church since that time, the applicant stated that he was not a member of any churches when he submitted his Form I-687 in 1990. Pursuant to 8 C.F.R. § 245a.12(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 inconsistencies in the record regarding the applicant's absences from the United States and his addresses of residence in the United States, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988 as required under Section

1104(c)(2)(B) of the LIFE Act. Given this, 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.