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**U.S. Citizenship  
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Services**

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FILE:



Office: HARTFORD

Date:

**JAN - 5 2009**

MSC 02 246 61492

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.

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 by the Director, Hartford, Connecticut, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The 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 for the applicant states that the director erred in not applying the correct evidentiary standards, and asserts that the applicant has submitted sufficient evidence to establish his continuous residence. The applicant submits additional documents on appeal.

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, the list also permits the submission of affidavits and any other relevant document. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In the Notice of Intent to Deny (NOID), dated September 14, 2005, the director stated that the applicant failed to submit sufficient evidence demonstrating his continuous unlawful residence in the United States during the requisite period. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated February 4, 2006, the director noted that the applicant responded to the NOID, but that his response failed to substantiate his claim.

On appeal, counsel reasserts that the applicant has submitted numerous affidavits and additional evidence in support of his claim. Counsel submits additional copies of these documents on appeal.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate his continuous residence in the United States in an unlawful status during the requisite period.

In an attempt to establish continuous unlawful residence in the United States during the requisite period since prior to January 1, 1982, the applicant submits evidence, including letters, affidavits, and receipts to support his Form I-485 application. The AAO has reviewed the entire record.

The AAO finds that the applicant has submitted sufficient reliable evidence, including medical records, which cumulatively establishes his continuous residence from 1984 through May 4, 1988. However, the submitted evidence which pertains to the period prior to 1984 is neither probative, nor credible. The applicant also submitted various documents, including tax returns, which are not relevant as they relate to periods after 1989.

The applicant has submitted letters, and affidavits, in support of his application, however, contrary to counsel's assertion, the applicant has failed to submit sufficient reliable evidence of his continuous residence in the United States throughout the requisite period. The applicant claims that he first entered the United States in September 1981, when he was 12 years old. During the years from 1981 through 1983 the applicant was less than 14 years old and would be required to attend school. However, the applicant does not submit any school records, nor does he provide an explanation as to why he is unable to provide his school records.

In addition, the applicant does not provide any documentation or explanation whatsoever of how he sustained himself from 1981, the year of his claimed entry, through 1988. During the years from 1981 through 1983 the applicant was less than 14 years old, and therefore, would have had to have been provided for and cared for by an adult. Yet, no reliable documentation was provided.

It is noted that the applicant states on his Form I-687 that he worked as a Laborer in 1981 when he was less than 13 years old. It is unlikely, however, that the applicant would be employed as a Laborer at such a young age. It is also noted that the applicant submitted an affidavit from a former landlord, Rosa, stating that the applicant resided with his family at [REDACTED], Sealy, TX 77474, from March 1982 to November 1987. However, the applicant does not list any such address on his Form I-687, and he lists different addresses for the period from 1982 to 1987. Specifically, on his Form I-687 the applicant lists [REDACTED], Sealy, TX 77474, as his address from January 1982 to January 1985; and, [REDACTED], Belville, TX 77418, as his address from January 1985 to November 1989. Given these inconsistencies this affidavit is deemed not credible nor probative.

This lack of documentation, such as school records, without an explanation as to why these documents are not available, casts considerable doubt on whether the applicant resided in the United States since 1981 as he claims. Doubt cast on any aspect of the applicant's proof may 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, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status during the requisite period.

The applicant has not provided any reliable evidence of residence in the United States for the period prior to 1984. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), 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 with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

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.