

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

L2

[Redacted]

FILE:

MSC 02 243 61967

Office: SALT LAKE CITY

Date: MAY 06 2009

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. 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.

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 in Salt Lake City, Utah. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application on the grounds that the applicant failed to establish that he entered the United States before January 1, 1982, resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and was continuously physically present in the United States from November 6, 1986 through May 4, 1988.

On appeal, counsel asserts that the applicant has submitted sufficient credible evidence to establish that he entered the United States before January 1, 1982, and that he resided continuously in the United States in an unlawful status, and was continuously physically present in the country, during the requisite periods for LIFE legalization.

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, as well as 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).

“Continuous unlawful residence” is defined at 8 C.F.R. § 245a.15(c)(1), as follows: “An alien shall be regarded as having resided continuously in the United States if *no single absence* from the United States has *exceeded forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed.” (Emphases added.)

“Continuous physical presence” is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: “An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of *brief, casual, and innocent absences* from the United States.” (Emphasis added.) The regulation further explains that “[b]rief, casual, and innocent absence(s) as used in this paragraph means *temporary, occasional trips abroad* as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.” (Emphasis added.) 8 C.F.R. § 245a.16(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 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 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).

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, a native of Mexico who claims to have lived in the United States since November 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on May 31, 2002.

In a Notice of Intent to Deny (NOID), dated March 14, 2007, the director indicated that the applicant had not submitted sufficient credible evidence to establish his claim. The director indicated that the applicant’s claim to have entered the United States before January 1, 1982 is contradicted by documents in the record – a copy of his son’s birth certificate – which calls into question the veracity of his claimed entry date into the United States. The applicant was granted 30 days to submit additional evidence.

In response to the NOID, counsel submitted a letter asserting that the director did not properly evaluate all the documentation submitted by the applicant. Counsel asserted that the evidence of record was sufficient to establish the applicant’s eligibility for LIFE legalization.

On February 22, 2008, the director issued a decision denying the application on the ground that the response to the NOID was insufficient to overcome the grounds for denial.

On appeal, counsel asserts that the applicant has submitted sufficient credible evidence to establish that he entered the United States before January 1, 1982, and that he resided continuously in the United States in an unlawful status, and was continuously physically present in the country during the requisite periods for LIFE legalization. Counsel submits no additional documentation with the appeal.

The AAO maintains plenary power to review each appeal 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 AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered the United States before January 1, 1982, resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and was continuously physically present in the United States from November 6, 1986 through May 4, 1988. The AAO determines that he has not.

The documentation submitted by the applicant in support of his claim that he was continuously resident and physically present in the United States during the requisite periods for LIFE legalization consists of the following:

- A notarized letter of employment signed by [REDACTED] manager of Courthouse Square, a restaurant in Waukegan, Illinois, dated January 17, 1995, stating that the applicant was employed from December 1981 to February 1985.
- A notarized letter of employment from [REDACTED], president of Casa Bonita, in Waukegan, Illinois, dated January 10, 1995, stating that the applicant was employed from February 1985 to March 1986.
- An affidavit from [REDACTED], dated December 16, 1994, stating that the applicant resided with her at her residence located at [REDACTED] Illinois, from November 1981 to February 1985.
- Two Form W-2 Wage and Tax Statements for the year 1988 from Simon Brothers Bakery Inc. and Le Cheesecake Enterprises, Inc., both in Skokie, Illinois.
- A Form 1040A U.S. Individual Income Tax Return for 1988, with the name [REDACTED], resident at [REDACTED]

The AAO has reviewed each document in its entirety to determine the applicant's eligibility. Here the submitted documentation is not probative or credible.

The applicant's claims that he entered the United States before January 1, 1982, resided continuously in the country and was physically present in the country during the requisite periods for legalization under the LIFE Act, are contradicted by documentation in the record. The applicant stated on the Form I-485 he filed in May 2002, that he has four children – three were born in Mexico and one was born in the United States. The applicant listed the dates of birth of his children born in Mexico as – August 26, 1982; May 5, 1984; and November 23, 1988. The applicant submitted birth certificates of the three children to corroborate his statement. The record reflects that on the Form I-687 (application for status as a temporary resident) dated April 28, 1995, the applicant listed only three of his children – two were born in Mexico and one born in the United States. He listed the dates of birth of the children born in Mexico as: August 26, 1982 and November 23, 1988. The applicant did not list the name and date of birth of his son who was born in Mexico on May 5, 1984. On the same Form I-687, the applicant indicated that he traveled outside the United States to Mexico on three separate occasions during the 1980s – from June to July 1987, October to November 1988, and February to March 1989. The applicant did not indicate any trip to Mexico in 1983 or 1984, which would have accounted for the conception and birth of his son in May 1984. Thus, the information noted above, strongly suggests that the applicant was in Mexico at the time his wife conceived his second son. This apparent omission and contradiction in the record casts considerable doubt on the applicant's claim that he entered the United States before January 1, 1982, resided continuously in the country and was physically present in the country through the requisite periods for legalization under the LIFE Act.

In the NOID dated March 14, 2007, the director notified the applicant of the contradiction and granted him the opportunity to provide rebuttal information to explain or justify the contradiction. In response, the applicant submitted an affidavit dated November 23, 2006. In paragraph 4, of the affidavit, the applicant stated "After my wife moved to the U.S. she conceived our second child. She traveled to Mexico for the birth of our second son [REDACTED] who was born on May 5, 1984. His birth was not registered with the authorities until November 1, 2001. My father in law registered him for us. Neither myself nor my wife were present at that time." The applicant did not state with any degree of specificity the circumstances surrounding his wife's move to the United States, such as, when and how his wife moved to the United States and how and when she traveled to Mexico to give birth to his son. There is no documentation in the record evidencing that the applicant's wife resided in the United States during the 1980s. Thus, the applicant has not overcome the presumption that he was in Mexico at the time his son was conceived in 1983 and or was born in 1984, and undermines the veracity of his claim that he entered the United States before January 1, 1982, resided continuously and was physically present in the United States from before January 1, 1982 through May 4, 1988.

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 without competent objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.* The applicant has provided contradictory information and statement in support of his application. 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 – consisting of letters of employment, an affidavit from an individual who claims to have resided with the applicant during the period 1981 to 1985, W-2 Wage and Tax Statements for the year 1988 and a Form 1040A U.S. Individual Income Tax Return for 1988 – offered by the applicant as evidence of his continuous residence and continuous physical presence in the United States from before January 1, 1982 through May 4, 1988, and from November 6, 1986 to May 4, 1988, is suspect and it must be concluded that the applicant has failed to establish that he continuously resided and was continuously physically present in the United States during the requisite periods for legalization under the LIFE Act.

For example, the affidavit from [REDACTED], dated December 16, 1994, stated that the applicant resided with her at her residence located at [REDACTED] Chicago, Illinois, from November 1981 to February 1985, however, the applicant listed his address during the same period as [REDACTED]

Chicago, Illinois. As previously stated, doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.* Also, the letters of employment from Courthouse Square and Casa Bonita, do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i). The letters were not written on the company's letterheads, did not provide the applicant's address(es) during the period of employment, did not describe the applicant's duties, did not indicate whether the information about the applicant's employment was taken from company records, and did not indicate whether such records are available for review. Nor were the letters supplemented by earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed during any of the years indicated. Thus, the letters of employment have limited probative value. They are not persuasive evidence that the applicant resided in the United States from before January 1, 1982 through May 4, 1988, and was continuously physically present in the United States from November 6, 1986 through May 4, 1988 as required for legalization under the LIFE Act.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that he entered the United States before January 1, 1982, resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and was continuously physically present in the United States from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) and (C)(i)(1) of the LIFE Act. Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

The appeal will be dismissed, and the application denied.

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