

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

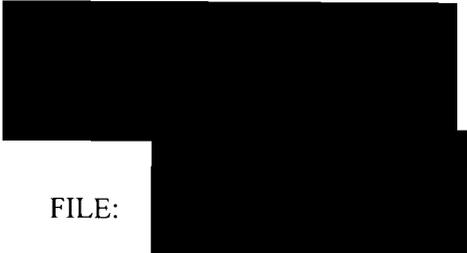
PUBLIC COPY

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



FILE:

Office: CHICAGO

Date:

APR 01 2010

LIN 00 017 50311

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.

Perry Rhew
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 Chicago, Illinois. The appeal was rejected by the Chief, Administrative Appeals Office (AAO), on the ground that it was not timely filed. The AAO's decision will be withdrawn and the case reopened for consideration of the appeal. Upon review of the entire record, the appeal will be dismissed on the merits.

The director denied the application on the ground that the applicant failed to establish that he entered the United States before January 1, 1982, and was continuously present in the United States for the requisite period to be eligible for adjustment to legal status.

On appeal the applicant asserts that he meets the above eligibility requirement.

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).

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.

The regulations provide an illustrative list of documents – which includes affidavits and "any other relevant document" – that the applicant may submit as evidence of continuous residence in

the United States during the requisite period under section 245A of the Act. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant, a native of Mexico who claims to have lived in the United States since September 1981, filed a Form I-485, Application to Register Permanent Residence or Adjust Status, at the Nebraska Service Center (NSC) on October 26, 1999. On July 18, 2002, the NSC issued a Request for Evidence (RFE). The applicant responded by submitting a package of materials, received at the NSC on October 4, 2002, which included a new Form I-485 bearing the applicant's signature and the date of September 30, 2002.

On May 4, 2007, a "Notice of Intention to Deny Application for Adjustment [to] Permanent Residence" was issued by the director in Chicago. The director stated that the application filed on October 26, 1999 (Form I-485) was under the LIFE Act, which was incorrect since the LIFE Act was not enacted until December 21, 2000. However, the new Form I-485 submitted by the applicant in October 2002, in response to the RFE issued by the NSC, was received during the filing period under the LIFE Act. Accordingly, the AAO will consider the second Form I-485 to be a timely filed application under the LIFE Act. In the notice issued on May 4, 2007, the director indicated that the evidence of record was insufficient to establish the applicant's unlawful presence in the United States during the requisite period for legalization under the LIFE Act, in particular from before January 1, 1982 through January 31, 1985. The applicant was granted 30 days to submit additional evidence.

The applicant did not respond to the Notice of Intention to Deny, whereupon the director issued a Notice of Decision on September 19, 2007, denying the application. The director incorrectly identified the application as one for temporary resident status (Form I-687), but the record clearly shows that the application at issue in this appeal is one for permanent resident status (Form I-485). In his decision the director reiterated that the evidence of record failed to establish the applicant's presence in the United States for the requisite time period to be eligible for adjustment to legal status. The applicant was advised that any appeal must be filed within 30 days at the U.S. Citizenship and Immigration Services (USCIS) office in Chicago.

The applicant filed an appeal in Chicago which bears a receipt stamp dated November 12, 2007, along with a partial photocopy of a Form W-2, Wage and Tax Statement, for the year 1982. The receipt date of the appeal was 54 days after the date of the decision.

On May 26, 2009, the AAO rejected the appeal, in accordance with the regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(1), on the ground that it was not filed within the requisite time period.

On June 10, 2009, the AAO received a letter from the applicant asserting that his appeal was mailed on September 22, 2002, received by the Chicago office on September 26, 2007, and was therefore timely filed. As evidence thereof the applicant submitted a photocopy of a certified mail receipt, addressed to the USCIS office in Chicago, with a date of September 26, 2007 stamped on the receipt.

While the receipt does not identify the contents of the mailing, the AAO will give the applicant the benefit of the doubt that it was his appeal form and accompanying documentation. Since this package was received within the requisite time period for an appeal, the AAO concludes that it was timely filed. Accordingly, the AAO will withdraw its decision rejecting the appeal, reopen the case, and consider the appeal on the merits.

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 central issue in this case is whether the applicant has submitted sufficient and credible evidence of his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act. The AAO determines that he has not.

The document submitted by the applicant on appeal is a partial photocopy of a Form W-2 that identifies the employee as [REDACTED] and the employer as [REDACTED] in Chicago. The applicant does not claim anywhere in the record that he has used the name [REDACTED] in the past. Nor does he claim anywhere else in the record to have worked for [REDACTED] in 1982, or in subsequent years. In short, the W-2 bears no apparent relation to the applicant.

It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent 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 the applicant's remaining evidence. *See id.*

The only other evidence of the applicant's residence in the United States during the years 1981 to 1988 is the following:

- An affidavit by [REDACTED] on the letterhead of [REDACTED] in Chicago, dated November 2, 1993, stating that the applicant lived at [REDACTED] from September 1981 until June 1988, during which time [REDACTED] was owner of the shoe store.
- A letter by [REDACTED] dated January 29, 2007, stating that the applicant has been a client of his business in Chicago, [REDACTED], since 1981.

- A letter by [REDACTED] in Chicago, dated January 31, 2007, stating that the applicant came to the United States in September 1981 and has been attending mass at the church for over 20 years.

The affidavit and letters are all minimalist documents with limited personal input by the authors. Considering how long they claim to have known the applicant, it is remarkable how few details the authors provide about the applicant's life in the United States and their interaction with him over the years. [REDACTED] implies that the applicant worked at his shoe store during the 1980s, but furnished no documentary evidence thereof, such as pay statements or employee records, and did not indicate what sort of job the applicant may have had. [REDACTED] claims the applicant as a client since 1981, but submits no documentary evidence thereof and did not even identify his type of business. [REDACTED] does not indicate when he personally met the applicant and is unclear about whether his knowledge of the applicant dating from the 1980s is based on personal knowledge, church records, or hearsay. Finally, none of the three individuals provided any corroborative documentation – such as photographs, letters, or the like – of a personal relationship with the applicant in the United States during the 1980s. For the reasons discussed above, the AAO concludes that the affidavit and letters from [REDACTED], and [REDACTED] have little probative value. They are not persuasive evidence that the applicant resided continuously in the United States during the years 1981-1988.

Based on the foregoing analysis of the evidence, which is both sparse and contradictory, the AAO concludes that the applicant has failed to establish that he resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) 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.