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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:



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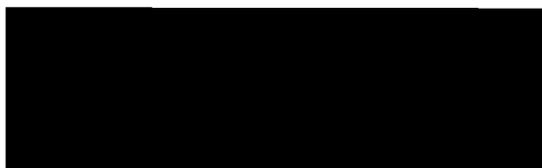
IN RE:

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.

A handwritten signature in ink, appearing to be "Perry Rhew".

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, Houston, Texas and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application based on the determination that the applicant was ineligible to adjust to permanent resident status under the provisions of the LIFE Act. The director found that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. Specifically, the director noted that the applicant submitted several affidavits which lacked sufficient detail to be considered probative and that the applicant submitted inconsistent testimony regarding his absences during the relevant period.

On appeal, through counsel, the applicant indicates that the director's decision was not supported by the evidence.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Following de novo review, the AAO finds that the applicant has failed to establish his continuous residence in the United States from January 1, 1982 through the end of the relevant period.

An applicant for permanent resident status 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. 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 212(a) of the Act, 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).

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. 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 "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.

The issue in this proceeding is whether the applicant has established that he (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of several affidavits and copies of earnings statements. The AAO has reviewed each document to determine the applicant’s eligibility; however, the AAO will not quote each witness statement in this decision.

The documentation contained in the record which pertains to the relevant period consists of the following:

- Affidavits from [REDACTED] While the affiants indicate that they met the applicant during the relevant period, their statements do not include sufficient detailed information about the applicant’s continuous residency in the United States since before January 1, 1982 and throughout the requisite period. They do not indicate how they date their initial acquaintance with the applicant, how frequently they saw the applicant during the relevant period, or where the applicant lived during the relevant period.
- An affidavit from [REDACTED] who indicates that the applicant, her nephew, lived with her [REDACTED] in Houston, Texas until August 1984.
- A letter from [REDACTED] indicating that the applicant rented an apartment from August 1984 until October 1985.
- A letter from [REDACTED] Church indicating that the applicant has been a member of the congregation since December 31, 1985. This letter does not conform to the statutory requirements for attestations by churches, unions, or other organizations, which is found at 8 C.F.R. § 245a.2 ((d)(3)(v)). That regulation requires such attestations to “show the inclusive dates of membership and state the address where the applicant resided during the membership period.” The letter does not provide the address where the applicant resided during the relevant period or any other information that is probative of the issue of his initial

entrance to the United States prior to January 1981 or his continuous residence for the duration of the statutory period.

- Copies of earnings statements for the years 1983 until 1988 from [REDACTED]. The records from 1983 through 1986 indicate the applicant's address as [REDACTED] Houston, Texas. The applicant does not list this address on his Form I-687, which casts doubt on the reliability of these records.

As noted by the director, the record contains conflicting information regarding the applicant's initial entrance to the United States and his subsequent departures during the relevant period. The record contains a Form I-205 Record of Deportation which indicates that the applicant's first entrance to the United States was on January 6, 1982.

On appeal, the applicant indicates that he was nervous and gave the USCIS officers incorrect information. 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. at 591-92. The applicant has not provided independent objective evidence which resolves this inconsistency.

The record also contains inconsistent information regarding the applicant's departures from the United States during the relevant period. On his Form I-687 filed in 2005, the applicant indicates that he departed the United States in July 1986 and again in May 1987. However, in a previous Form I-687 filed in 1991, the applicant indicated an absence in 1985. Also, in an interview with USCIS on September 5, 2003, the applicant indicated that he departed the United States only once, in 1986. The director indicated in the Notice of Intent to Deny (NOID) that the applicant's testimony regarding his absences was inconsistent. On appeal, the applicant indicates that he mistakenly attested to a departure in 1985 because he truly believed his voluntary departure occurred in 1985 not 1986 as indicated by the record.

As is stated above, 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). The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3).

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 the relevant period as required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis.

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