

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



L2

DATE: JAN 06 2012

Office: DENVER

FILE:



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:



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: On May 30, 2002, the applicant filed an application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. On January 28, 2003, the application was denied. The applicant filed a timely appeal and the application was subsequently reopened on Service motion. However, the application was denied a second time by the Denver Field Office because the applicant failed to respond to two "Notices of Scheduled Interview." The applicant's request for reopening the decision was denied by the Denver District Office on November 15, 2010. He filed an appeal with the Administrative Appeals Office (AAO) on November 20, 2010.

The AAO determined that the second interview notice was sent to the wrong address. Furthermore, because the application was terminated for failure to prosecute, the applicant was issued a Notice of Denial with proper appeal rights. Pursuant to the regulation at 8 C.F.R. § 245a.19(a), an applicant who fails to appear for a scheduled interview, may, for good cause, be afforded another interview. In this case, the second interview notice was sent to the wrong address, and therefore, the application was denied for lack of prosecution.

Pursuant to the regulation at 8 C.F.R. § 103.5(b), the AAO *sua sponte* reopened the LIFE application, thereby withdrawing the director's decision. The AAO has the authority to reopen the matter *sua sponte* under section 245A of the Immigration and Nationality Act when it determines that manifest injustice would occur if the prior decision was permitted to stand. *Matter of O-*, 19 I&N Dec. 871 (Comm. 1989).

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 found that the director's basis for denial of the LIFE Act application was in error. However, the AAO identified alternative grounds for denial of the application. On September 13, 2011, the AAO issued a Notice of Intent to Deny (NOID) providing the applicant with an additional opportunity to provide evidence of his continuous residence during the relevant period. The applicant requested additional time to provide his response. This request was granted and the applicant submitted additional evidence. The AAO has reviewed the entire record of proceedings and finds that the applicant has not met his burden. The appeal will be dismissed.

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) continuously resided in the United States in an unlawful status throughout the relevant period since that date.

In support of his claim of continuous residence in the United States from prior to January 1, 1982, the applicant initially submitted one affidavit, from [REDACTED] indicates that he met the applicant in 1985 in Garden City, Kansas. He does not indicate how he dates his initial acquaintance with the applicant, where he lived, or how frequently he saw you during the relevant period.

On appeal, the applicant submits a handwritten letter from [REDACTED] indicating that the applicant worked for him "sometime between 1980 and 1985." This letter fails to comply with certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant's address at the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether USCIS may have access to the records; if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which

shall be signed, attested to by the employer under penalty of perjury and shall state the employer's willingness to come forward and give testimony if requested. The statement does not include much of the required information and can be afforded minimal weight as evidence of the applicant's residence in the United States for the duration of the requisite period.

The applicant also submits a record from the Social Security Administration indicating that the applicant earned no taxable wages between 1983 and 1990. The records pertain only to the period after 1990.

Finally, the applicant submits a letter from [REDACTED] who indicates that he met the applicant in 1986. He provides no further detail.

To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows you and that you have lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

While the applicant's failure to provide evidence other than affidavits shall not be the sole basis for finding that he failed to meet the continuous residency requirements, an application which is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on affidavits which are considerably lacking in certain basic and necessary information. As discussed above, the affiants' statements are significantly lacking in detail and do not establish that the affiants actually had personal knowledge of the events and circumstances of the applicant's residence in the United States. Few of the affiants provided much relevant information beyond acknowledging that they met the applicant during the relevant period.

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 she 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.



Page 5

