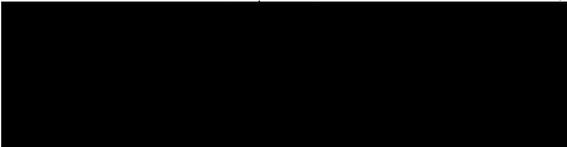


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Services

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FILE: [Redacted]
MSC 02 270 61355

Office: Dallas

Date: JUN 01 2006

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Dallas, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had failed to establish residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the applicant had submitted sufficient evidence to support her claim of continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel contends that the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) failed to consider all the evidence submitted by the applicant in support of her claim of residence in this country for the requisite period. Counsel provides copies of previously submitted documentation and a new affidavit in support of the appeal.

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. See § 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 Immigration and Nationality Act (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. 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 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.

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).

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to 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. Here, the submitted evidence is not relevant, probative, and credible.

The applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (Act) on October 28, 1991. At part #33 of the Form I-687 application where applicants were asked to list all residences in the United States since the date of their first entry, the applicant listed [REDACTED] New York, from January 1981 to September 1987, and [REDACTED] New York from October 1987 to March 1991. Further, the applicant failed to list any information at part #34 of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, business, etc. Subsequently, on June 27, 2002, the applicant submitted her Form I-485 LIFE Act application.

In support of her claim of continuous residence in the United States since prior to January 1, 1982 through May 4, 1988, the applicant submitted an affidavit signed by [REDACTED]. [REDACTED] indicated that he had knowledge that the applicant resided in this country since late 1985 because they met on occasion at birthdays and parties. Although the affiant attested to the applicant's residence in this country since late 1985, he failed to provide any specific, detailed, and verifiable testimony, such as the applicant's address(es) of residence in this country, to corroborate the applicant's claim of residence in this country. Further, [REDACTED] failed to provide any testimony relating to the applicant's residence in the United States in that period prior to January 1, 1982 to late 1985.

The applicant also included an affidavit signed by [REDACTED] who stated that he had known the applicant since 1981. [REDACTED] declared that he had met the applicant on one occasion in 1982 at John F. Kennedy International Airport in Queens, New York. [REDACTED] indicated that subsequently met with the applicant and her family several times in New York at events such as a marriage ceremony and a family gathering. However, [REDACTED] failed to provide sufficient details and specific verifiable information relating to the applicant's residence in this country since prior to January 1, 1982 to May 4, 1988.

The record shows that the applicant appeared for the requisite interview relating to her Form I-485 LIFE Act application on March 25, 2003. At this interview, the applicant submitted a receipt dated March 15, 1987, which reflected her purchase of a twenty-two karat gold chain from the retail store, [REDACTED] in Artesia, California and listed her address as [REDACTED] in Los Angeles, California. The address of residence attributed to applicant in this receipt is in direct

conflict with her own testimony that she resided at [REDACTED] in Astoria, New York, from January 1981 to September 1987 at part #33 of the Form I-687 application. The applicant failed to provide any explanation for this discrepancy.

The record further shows that the applicant was issued a Form I-72, Request for Additional Evidence, at her interview on March 25, 2003 in which she was asked to provide additional evidence in support of her claim of residence for the requisite period. In response, the applicant submitted four new documents in support of her claim of residence.

The applicant submitted a letter that contained the letterhead of the Islamic Council of America Inc, [REDACTED] in New York, New York and is signed by [REDACTED] who listed his position as president. In this letter, [REDACTED] stated that a few unnamed individuals that he knew told him that the applicant and her husband attended congregational prayers at this religious institution in 1983 and 1984. [REDACTED] declared that during this period the applicant and her husband resided at [REDACTED] in New York, New York. However, [REDACTED] testimony that the applicant resided at [REDACTED] in New York, New York in 1983 and 1984 is directly contradicted by the applicant's testimony that she resided at [REDACTED] in Astoria, New York, from January 1981 to September 1987 at part #33 of the Form I-687 application. In addition, the applicant failed to provide any explanation as to why she did not list her affiliation with the Islamic Council of America Inc, [REDACTED] of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, business, etc. Moreover, [REDACTED] testimony must be considered as hearsay because he testified as to what unnamed individuals had told him regarding the applicant's attendance at this institution rather than providing any testimony based upon his direct knowledge.

The applicant provided an affidavit of membership that contained the letterhead of the [REDACTED] New York in Elmhurst, New York and is signed by [REDACTED] who listed his position as general secretary. [REDACTED] indicated that the applicant and her husband resided at [REDACTED] Apartment #16 in New York, New York and they have been active members of this organization since October 1982. However, it must be noted that [REDACTED] testimony regarding the applicant's address of residence is in direct conflict with the testimony of the applicant in that she has never testified at any point in these proceedings that she and her spouse resided at the [REDACTED] address in New York, New York during the requisite period or any point thereafter. Further, the applicant failed to provide any explanation as to why she did not list her membership in the [REDACTED] New York at part #34 of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, business, etc.

The applicant included an affidavit of residence that is signed by [REDACTED] who stated that he was the legal tenant at [REDACTED] Apartment #16 in New York, New York. [REDACTED] declared that the applicant and her husband resided with him at this address from August 1983 to August 1984. However, [REDACTED] declaration that the applicant resided with him at [REDACTED] Apartment #16 in New York, New York from August 1983 to August 1984 is directly

contradicted by the fact that the applicant listed her address of residence as [REDACTED] in Astoria, New York, from January 1981 to September 1987 at part #33 of the Form I-687 application.

The applicant also submitted a statement written on two separate prescription pad pages that contained the letterhead of [REDACTED] at [REDACTED] in New York, New York. The statement is signed by an individual whose first name most closely resembles [REDACTED] with the remainder of the signature being illegible. This individual declared that they had examined the applicant and her husband at the medical offices of Central Park Associates at 30 Central Park South in New York, New York in 1985 and 1986. However, this individual failed to provide any testimony relating to the applicant's residence in this country in that period from prior to January 1, 1982 to 1984 and the period from 1987 to May 4, 1988.

On March 29, 2004, the district director issued a notice of intent to deny to the applicant informing her of CIS's intent to deny her application because she failed to submit sufficient credible evidence of continuous unlawful residence in the United States from January 1, 1982 through May 4, 1988. However, the district director mistakenly concluded that the applicant failed to respond as discussed in the previous paragraphs to the Form I-72 issued on March 23, 2003. Further, the district director erroneously characterized the applicant's entry into this country with a B-2 visitor's visa in 1984 as a lawful entry despite the fact that she has always claimed she was returning to an unrelinquished, unlawful residence in the United States that had been initially established when she remained and began residing in this country after her period of authorized stay had expired in July 1981.

In response, counsel submitted a statement in which he pointed out that the district director had failed to acknowledge the applicant's prior response to the Form I-72 and reiterated her claim that she initially began her unlawful residence in this country in 1981. As the district director's errors have been recognized and rectified as discussed above, these issues need not be discussed further.

The district director determined that the applicant failed to submit sufficient credible evidence demonstrating her residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988, and, therefore, denied the Form I-485 LIFE Act application on June 22, 2004.

On appeal, counsel submits a new affidavit in support of the applicant's claim of residence for the requisite period. This affidavit is signed by [REDACTED] who indicates that he is the owner of the building located at [REDACTED] in Astoria, New York. [REDACTED] states that the applicant and her husband resided in the one bedroom studio apartment in the basement of this address from May 1987 to October 1987. However, [REDACTED] testimony regarding the applicant's dates of residence at this address is in direct conflict with her testimony that she resided at [REDACTED] St., in Astoria, New York, from January 1981 to September 1987 at part #33 of the Form I-687 application. Neither counsel nor the applicant provides any explanation for this discrepancy.

Counsel's statements regarding the sufficiency of the evidence submitted by the applicant in support her claim of continuous residence in this country for the requisite period have been considered. However, the evidence submitted by the applicant relating to her residence in the United States from

prior to January 1, 1982 through May 4, 1988 lacks sufficient detail and is contradictory to the substance of her own testimony regarding her residence in this country for the requisite period. Although counsel contends that no attempt has been made to verify the content of testimony contained in the supporting documentation, he fails to advance any compelling reason as to why any attempt should be made in light of these discrepancies and the minimal probative value of the applicant's evidence of residence.

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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. at 582.

The absence of sufficiently detailed supporting documentation and the existence of conflicting testimony that contradicts critical elements of the applicant's claim of residence for the requisite period seriously undermine the credibility of this claim, as well as the credibility of the documents submitted in support of such claim. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet her burden of proof in establishing that she has resided in the United States since prior to January 1, 1982 to May 4, 1988 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.12(e) and *Matter of E-- M--*, 20 I&N Dec. at 77.

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 May 4, 1988 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 as well.

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