

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

L2

PUBLIC COPY

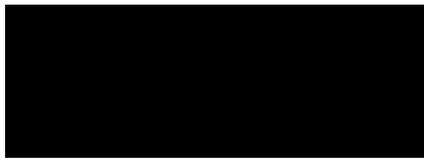


FILE: [REDACTED] Office: HOUSTON Date: JUN 02 2006
MSC 02 233 61054

IN RE: Applicant: [REDACTED]

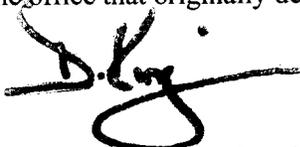
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

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. Any further inquiry must be made to that office.


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

The district director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the director gave no reasons for questioning the credibility of the applicant. Counsel submitted no additional documentary evidence to establish that the applicant is qualified for benefits under the LIFE Act.

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. 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 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).

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 Citizenship and Immigration Services (CIS) 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).

On his Form I-687, Application for Status as a Temporary Resident, signed on July 20, 1990, the applicant stated that he had entered the United States unlawfully in December 1981, and worked as a “house caretaker” from that date through November 1987. The applicant further stated that, from December 1987 until the “present,” he was self employed selling cars at 4001 Watonga, Houston, Texas.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence throughout the application process:

1. A July 24, 1990 sworn affidavit from [REDACTED] stating that the applicant lived with him at his home [REDACTED] in Houston, Texas, from December 1, 1981 through February 15, 1985; and again from April 2, 1985 through November 1, 1987. [REDACTED] stated that the applicant did maintenance work. The applicant submitted no evidence that [REDACTED] was present in the United States and owned or rented a residence at Quincannon in Houston during the stated time frame.
2. An April 2, 2002 letter from [REDACTED] who stated that the applicant is a family friend. She also stated that she met the applicant in 1982, when he came to her house looking for a room to rent. [REDACTED] stated that the room was already taken, and that the affiant stayed with his friend, [REDACTED] for whom he worked. [REDACTED] further stated that the applicant "rented a room in my house first time in 1988 for a few months." In a July 20, 1990 sworn affidavit, [REDACTED] stated that the applicant was her tenant from December 1987 to July 1988. The affiant did not indicate any prior knowledge of the applicant in her 1990 affidavit. The applicant submitted no evidence to explain this inconsistency [REDACTED] statements. 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. 582, 591-92 (BIA 1988).
3. An April 2, 2002 statement from [REDACTED] who stated that he had a business relationship with the applicant dating back to 1986. [REDACTED] owns an automotive repair shop, and stated that the applicant was in the business of "buying, fixing and selling cars."
4. An April 23, 2002 letter from the Spring Branch Community Church in Houston, Texas, reflecting that the applicant was a student in conversational English at the church from April to May 1987, and from September 1987 to May 1988.
5. A Syrian passport reflecting that the applicant was approved for a B-2, nonimmigrant temporary visitor's visa, by the United States Embassy in Damascus on November 10, 1987, and that he entered the United States pursuant to that visa on December 13, 1987.
6. A copy of a card from the Greater Houston Area of the American Red Cross reflecting that the applicant completed two first aid courses in April 1988.
7. An April 15, 2002 letter from [REDACTED] stating that the applicant "was here in the United State[s] before I met him for a long time." The letter implies that the affiant had known the applicant since 1988, but contains no details about their acquaintance.
8. An April 15, 2002 letter from [REDACTED] stating that the applicant left Syria in late 1981, and that the affiant learned from the applicant's parents that he came to the United States.
9. A copy of a U.S. Postal Service money order, identifying the applicant as the purchaser with an address in Houston; however, the date of the money order is illegible.

In his Notice of Intent to Deny (NOID), the director noted, "In order to receive a visitor's visa, you must convince a State Department official that you maintained your residency, employment and citizenship in

Syria. It appears that you were in fact residing and working in Syria, and did not obtain a visitor's visa fraudulently."

In response, the applicant submitted a statement from the applicant's family, stating that the applicant signed and approved the necessary documentation to apply for his visa, and that they in turn hired a "document processing third party," who submitted the documentation to the American Embassy. The statement further indicated that the applicant returned to Damascus in November 1987 to personally receive his visa, and returned to the United States legally in December 1987. The applicant's family stated that they were concerned about the danger that the applicant faced in crossing the Mexican border and that they "were ready to do anything [they] could to help him correcting [sic] that situation as soon as possible, even if it means making up stories."

According to counsel:

The actual visa in December 1987 was obtained while [the applicant] was in the United States illegally, and it was obtained through the assistance of his family in Damascus, who made the application for him. In order to obtain the visa, they had to make up documents to show that he lived there at the time, and had business and employment commitments with some companies, bank accounts, etc. They had not done this at the time of the first application in May 1987. They did it the second time, in October 1987, and it worked. But in fact, you have the affidavits from people and businesses who knew him in Houston during those times, from December 1981 through November 1987.

Counsel's argument is not persuasive. First, nothing in the record supports his statement that the applicant's family "made up" specific documentation, e.g., bank accounts or employment commitments, to establish his presence in Syria to support his visa application. According to the statement from the applicant's family, the documentation for the visa application was approved and signed by the applicant. Further, such an assertion of "made up" evidence is equally suggestive that the documentation submitted in support of this application is "made up," and that the evidence submitted in support of the B-2 visa application was, indeed, real. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The director also noted in his NOID that evidence included in the record reflected that the applicant attended the University of Damascus from 1976 until April 1982, receiving a Bachelor of Science degree. In his cover letter accompanying the applicant's response to the NOID, counsel stated that the applicant took his exams early and then left Syria. Counsel stated that the language in the transcript indicates only that the applicant was awarded a degree, not that he was present for a ceremony or that a ceremony took place. The record does not contain a copy of the applicant's transcript referred to by counsel. The record does, however, contain a copy of the applicant's degree certificate, which, according to the accompanying translation, states:

Damascus University senate, on the 6th Day of April, 1982, having viewed the result of the final examination held at the faculty of Mechanical & Electrical Engineering, has decided to confer upon [the applicant] the degree: Bachelor of Mechanical Eng.; ; [sic]

Dept. of Mechanical Powers Eng. – Section of Machineries – at a Fair grade , , , [sic]

With all rights and privileges thereto pertaining.

Damascus, 13.08.1987 AD

Counsel's assertion that no evidence suggests that the applicant attended a graduation ceremony to receive his degree has merit, however, nothing in the record supports his assertion that the exams were given in 1981 and that the applicant left the country immediately upon their completion. *See id.*

In his Notice of Denial, the director noted the documentation submitted by the applicant to explain the "discrepancies" in his case, and concluded that the applicant had not established his credibility. On appeal, counsel takes issue with this language in the decision, arguing that the director failed to articulate why the evidence was not credible.

While we concur with counsel that the director did not specify his reasons for discrediting the applicant's documentation, counsel requested no specific remedy on appeal and submitted no additional evidence. The AAO's *de novo* review of the evidence finds that the applicant submitted no competent, credible evidence to explain the completion of the requirements for his degree at the University of Damascus in Syria in 1982 when he was allegedly present in the United States. Further, the explanation of the applicant's family as to the procedures by which the applicant obtained his B-2 visa at the American Embassy in Damascus is without sufficient corroborating documentary evidence to give evidentiary weight to their statement.

The applicant in this case asserts that he resided in the United States with [REDACTED] from December 1981 until November 1987. Nonetheless, the applicant submitted no contemporaneous documentation of his presence in the United States during that time frame. While affidavits may, in certain circumstances, provide sufficient credible evidence to meet the applicant's burden of proof, a single, unsubstantiated affidavit falls far short of that standard.

Given the lack of any contemporaneous documentation to establish that the applicant was present in the United States prior to 1987, the applicant has failed to establish continuous residence in the United States for the required period.

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