

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, D.C. 20529



U.S. Citizenship  
and Immigration  
Services

L2

**PUBLIC COPY**



FILE:



Office: CHICAGO

Date:

APR 27 2007

MSC 02 170 61234

IN RE:

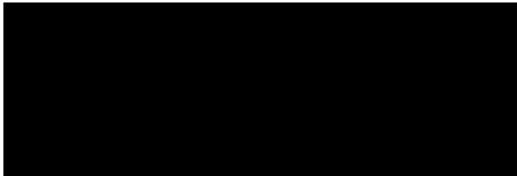
Applicant:



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. 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, Chicago, Illinois, 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 she had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, counsel asserted that the applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel indicated that a brief and/or evidence would be submitted within 30 days. However, more than three years later, no additional correspondence has been presented by counsel.

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 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.

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).

Here, the submitted evidence is not relevant, probative, and credible. In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence:

- An affidavit notarized December 23, 1992 from [REDACTED] of New York, who indicated that the applicant resided with him at [REDACTED] B, New York since May 1985.
- An affidavit notarized December 10, 1992 from an acquaintance, [REDACTED] of New York, who attested to the applicant's New York residences at [REDACTED], Apt. 13, from September 1981 to May 1985 and at [REDACTED], New York since May 1985.
- An affidavit notarized December 22, 1992 from an acquaintance, [REDACTED] of New York, who indicated that the applicant supported herself while working as a hair dresser.
- An affidavit notarized December 23, 1992 from a cousin, [REDACTED] of New York, who attested to the applicant's New York residences at [REDACTED], from September 1981 to May 1985 and at [REDACTED] New York since May 1985.
- An affidavit notarized December 30, 1992 from [REDACTED] of New York, who attested to the applicant's residence in the United States since 1981.
- A notarized affidavit from [REDACTED] of Montreal, Canada, who indicated that the applicant visited him in Montreal from November 5, 1987 to November 27, 1987.
- A notarized affidavit from [REDACTED] of New York, who indicated that he drove the applicant to Canada on November 5, 1987.

According to the interviewing officer's notes, [REDACTED] is a friend from Africa who the applicant met in 1987 and the applicant did not recall either [REDACTED] or [REDACTED]. On December 15, 2003, the director issued a Notice of Intent to Deny, advising the applicant that the documentation submitted did not meet the criteria to establish continuous residence in the United States during the requisite period. The applicant was granted 30 days to submit additional documentation. The applicant, in response, submitted a notarized affidavit from [REDACTED] of Chicago, Illinois, who indicated to have met the applicant in Harlem, New York in 1982. The affiant asserted that the applicant was 11 years old and was residing with her uncle at the time. The applicant also submitted a statement dated January 16, 2004 from [REDACTED] secretary of [REDACTED] in New York, which indicated that the applicant "attends religious services on Fridays at 1.00 p.m." The applicant asserted that this statement "is the only information I was able to get from their records due to the fact that all their full-time and older permanent employees that knew me personally have passed on."

While 8 C.F.R. § 245a.2(d)(3) sets forth specific criteria which affidavits of residence from employers and organizations should meet to be given substantial evidentiary weight, we look to *Matter of E-- M--*, *supra*, for guidance in determining the appropriate criteria for affidavits from other third party individuals.

Citizenship and Immigration Services (CIS) has determined that affidavits from third party individuals may be considered as evidence of continuous residence. *See Matter of E-- M--*, *supra*. In ascertaining the evidentiary weight of such affidavits, CIS must determine the basis for the affiant's knowledge of the information to which he/she is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E-- M--*, *supra*, the affidavits would not necessarily be fatal to the applicant's claim, if the affidavits upon which the claim relies are consistent both internally and with the other

evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony provided. The affidavits, however, from [REDACTED] have little evidentiary weight inasmuch as they do not state the basis of the affiants' knowledge of the applicant. Further, the affidavits from the applicant's uncle, [REDACTED], and cousin, [REDACTED] must be viewed as having a self-evident interest in the outcome of proceedings, rather than as independent, objective and disinterested third parties.

The regulation at 8 C.F.R. § 245a.12(e) provides that "[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods." Preponderance of the evidence is defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." *Black's Law Dictionary* 1064 (5<sup>th</sup> ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991). Given the virtual absence of contemporaneous documentation and the insufficiency of the affidavits provided by the applicant, it is determined that the applicant has not met her burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982 and resided in this country in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b).

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