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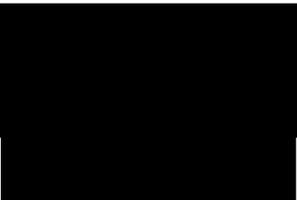


**U.S. Citizenship
and Immigration
Services**

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Office: NEWARK

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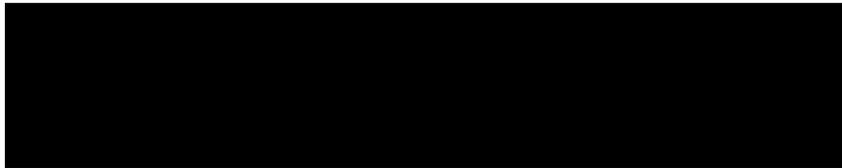
Applicant:



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. If your appeal was sustained, or if your case 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, Newark, 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 seeks to clarify inconsistencies in the record, and claims that the applicant was not afforded a reasonable opportunity to respond to the noted deficiencies in the evidence and to present witnesses in support of his application. In support of these claims, counsel submits two newly-executed affidavits from the applicant's mother and brother.

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).

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).

In the affidavit for class membership, which he signed under penalty of perjury on March 12, 1990, the applicant stated that he first arrived in the United States in March 1980, when he crossed the border without inspection. On his Form I-687, Application for Status as a Temporary Resident, which he also signed under penalty of perjury on March 13, 1990, the applicant claimed to live at the following addresses during the relevant period:

April 1980 to January 1985:

February 1985 to Present:

The applicant also claimed to work for Imaging Consultants as a Storekeeper from March 1983 to September 1985, and [REDACTED] as a Serviceman from November 1985 to present.

In an attempt to establish continuous unlawful residence since before January 1982 through May 4, 1988, the applicant furnished the following evidence:

- (1) Undated document entitled "Affidavit of Residence" by [REDACTED] claiming that the applicant resided with her at [REDACTED] Streamwood, IL from February 1985 to the present. This document was not signed under the penalty of perjury or in the presence of a notary public.
- (2) Undated affidavit of residence by [REDACTED] claiming that the applicant resided with him and his family at [REDACTED], from April 1980 to January 1985. This document was not signed under the penalty of perjury or in the presence of a notary public.
- (3) Undated statement from [REDACTED] claiming she has known the applicant since birth and that he has been residing in the United States since 1980.

- (4) Undated statement from [REDACTED], claiming he has known the applicant since 1980 when he met him at a cultural program.
- (5) Letter dated January 9, 1990 from [REDACTED] Secretary of the Muslim Community Center, claiming that the applicant has been visiting the center "for praying" since 1981. He further claims that the applicant participated in community activities.
- (6) Undated letter from [REDACTED] Chief Consultant of Diagnostic & Imaging Consultants, claiming that the applicant worked for the company as a Storekeeper from March 1983 to September 1985.
- (7) Undated letter from [REDACTED] Real Estate & Insurance Broker, claiming that he has known the applicant since 1985. He claims that the applicant worked with him as a building repair and maintenance service man.

On June 14, 2005, CIS issued a Notice of Intent to Deny the application. The district director noted that the record did not contain credible and verifiable evidence that the applicant entered the United States prior to 1982 and continually resided in the United States since before January 1, 1982 through May 4, 1988. The applicant was afforded the opportunity to submit additional evidence in support of the application. In response, counsel for the applicant submitted the following documents:

- (8) Undated notarized statement by [REDACTED], claiming that she is the applicant's Aunt and that she has known him since birth. She further claims that she came to the United States in 1981, and that she first met the applicant at a family party in Streamwood, IL in September 1981. She provides her own address and employment histories for the record.
- (9) Undated notarized statement by [REDACTED] claiming that she first came to the United States in 1972. She also claims that she is the applicant's Aunt and that she has known him since birth, but that the first time she met the applicant was at a party in Streamwood, IL in 1981.
- (10) Undated statement from [REDACTED], written on letterhead stationary for KMS Realty Inc., claiming that he has known the applicant since 1981. He claims that the applicant worked with him as a repairman for buildings.
- (11) Statement dated July 29, 2005 by applicant, claiming he first entered the United States in March 1980. He claims that during the relevant period, he left the United States on two occasions. The first departure was from January 1985 to February 1985, and the second departure was from April 1988 to May 1988.

The director denied the application on September 10, 2005. Although the newly-submitted evidence was considered, the director noted several inconsistencies and found that the record in its entirety was insufficient to establish that the applicant was eligible for the benefit sought. On appeal, counsel for the applicant asserts that the applicant satisfied his burden of proof by a preponderance of the evidence, and submits two newly-executed affidavits in support of the applicant's eligibility.

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 quality 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 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 *Matter of E-- M--* decision provides guidance in assessing evidence of residence, particularly affidavits. In that case, the applicant had established eligibility by submitting (1) the original copy of his Arrival Departure Record (Form I 94), dated August 27, 1981; (2) his passport; (3) affidavits from third party individuals; and (4) an affidavit explaining why additional original documentation is unavailable. Furthermore, the officer who interviewed that applicant recommended approval of the application, albeit, with reservations and suspicion of fraud. In this case, the interviewing officer recommended denial of the application, and there is no Form I-94 or admission stamp in a passport establishing the applicant entered the United States prior to January 1, 1982.

Although the applicant claims he entered the United States in March 1980, he likewise claims that he entered without inspection. As a result, there is no documentary evidence in the form of an arrival-departure record or stamped passport to verify the exact date of entry. The applicant provided two statements from his aunts, claiming that they first met him in September 1981 in Streamwood, Illinois. These statements, however, fall far short of meeting the generally accepted criteria for affidavits.

While there is no specific regulation which governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements which affidavits from organizations are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information which an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to. 8 C.F.R. § 245a.2(d)(3)(v).

While these standards are not to be rigidly applied, 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 such basic and necessary information.

The first issue with regard to these statements is that they are not affidavits, since they are not sworn statements under oath. While the applicant did submit notarized statements from two individuals in response to the NOID, these statements still omit critical information, such as the dates of the applicant's continuous residence to which they can personally attest and the address(es) where the applicant resided throughout the period which they have known the applicant. While [REDACTED] claims the applicant lived with her from 1985 onward, [REDACTED] makes no mention of the addresses at which she knew the applicant during this period. Moreover, she claims in her first statement that she has known the applicant in the United States since 1980, yet later claims in her notarized statement that she did not come to the United States until 1981 and first met the applicant in September of 1981 at a party. Furthermore, both she and [REDACTED] both claim to have known the applicant since birth, yet both claim to have first met him at a party in Illinois in 1981. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The applicant also submits statements from his alleged prior employers. These statements, however, are also insufficient. The undated statement from [REDACTED] written on his personal letterhead entitled "Real Estate & Insurance Broker," claims that he has known the applicant since 1985. He claims that the applicant worked with him as a building repair and maintenance service man. His second statement, however, written on letterhead stationary for KMS Realty Inc., claims that he has known the applicant since 1981. This two very different claims raise questions regarding the veracity of this person's statements. As stated above, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.* Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Despite the above-mentioned inconsistencies, these statements, along with the undated letter from [REDACTED] Chief Consultant of Diagnostic & Imaging Consultants, are insufficient to satisfy the requirements of 8 C.F.R. § 254a.2(d)(3)(i). Specifically, the statements of [REDACTED] and the statement from [REDACTED] both omit essential information. The regulation at 8 C.F.R. § 254a.2(d)(3)(i) provides that employment records are acceptable as proof of residence. When such records are not available, CIS will accept letters from former employers in lieu of such records, when the letters contain information such as the alien's address at the time of employment, the exact period of employment, any periods of layoff, duties with the company, whether or not the information provided is taken from company records, and where the records are located and whether CIS may have access to those records. These brief and contradictory statements omit almost all of this required information and, therefore, are not deemed persuasive pieces of evidence.

Furthermore, the letter from [REDACTED], Secretary of the Muslim Community Center, is also insufficient because it fails to meet the requirements of 8 C.F.R. § 254a2(d)(3)(v). Specifically, this letter merely claims that the applicant has been visiting the center “for praying” since 1981. It does not list critical information required by the regulation, such as his inclusive dates of membership, the address at which the applicant resided during his membership, how the author knows the applicant, or the origin of the information being attested to.

Finally, the applicant provides two affidavits from his mother and his brother on appeal, both of which corroborate the applicant’s claim that he came to the United States in March 1980 and that he returned twice between 1982 and 1988; namely, in January 1985 and April 1988. These affidavits, however, do not overcome the basis for the denial nor do they provide new corroborating evidence to support the applicant’s claims.

Given the absence of contemporaneous documentation and the reliance on statements from acquaintances which do not meet basic standards of probative value, it is concluded that the applicant has failed to establish, by a preponderance of evidence, that he continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

Therefore, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

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