



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

L2

FILE:

MSC 01 331 60956

Office: Los Angeles

Date: JUL 18 2007

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. The file has 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, Los Angeles, California, 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 contends that the applicant had submitted sufficient evidence including contemporaneous documents to support his claim of continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel provides copies of previously submitted documents 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).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982 to May 4, 1988, the submission of any other relevant document including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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.

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 file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (Act), on May 1, 1990. At part #19 of the Form I-687 application where applicants were asked to list all Social Security numbers used, the applicant failed to list any Social security numbers. In addition, 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] in Orange, California from 1981 to 1982, [REDACTED] in Orange, California from 1982 to 1984, and [REDACTED] in Santa Ana, California from an unspecified date to March 20, 1990, the date the Form I-687 was executed. Although the applicant also listed [REDACTED] in Anaheim, California as an address of residence from 1984 to 1985 at part #33 of the Form I-687 application, this listing was covered with white-out but remains legible prior to the filing of the Form I-687 application on May 1, 1990. The fact that entries at part #33 of the Form I-687 application listing the applicant’s addresses of residence during the requisite period are incomplete and have been altered brings into question the accuracy and credibility of such information. The applicant failed to provide any explanation for the incomplete and altered listing of his addresses of residence in the United States since prior to January 1, 1982 at part #33 of the Form I-687 application.

Further, at part #36 of the Form I-687 application where applicants were asked to list all employment in the United States since first entry, the applicant indicated that he worked as a gardener and handyman for an unnamed employer from 1981 to 1985, and that he was employed in cleaning services for another unnamed individual 1985 to 1989. The fact that the applicant failed to specify the names of his employers raises questions regarding the credibility of his claims of employment during the period in question.

In support of his claim of continuous residence in the United States from prior to January 1, 1982, the applicant submitted an affidavit that is signed by [REDACTED] stated that he knew the applicant through family relationships and that he had personal knowledge that the applicant resided in the United States. However, [REDACTED] failed to provide any specific and direct testimony relating to the applicant's residence in this country including the specific dates of his residence in the United States.

The applicant included an affidavit signed by [REDACTED] who noted that he knew the applicant resided in the United States since 1981 because he and the applicant are friends. [REDACTED] Singh listed the applicant's addresses of residence in this country as follows: [REDACTED] Orange, CA, from 1981 to 1982; [REDACTED] Orange, CA, from 1982 to 1984; [REDACTED] Cypress, CA, from 1984 to 1989; and, [REDACTED] Santa Ana, CA, from 1989 to July, 20, 1990, the date the affidavit was executed. However, [REDACTED] listing of the applicant's addresses of residence in the United States does not correspond to the applicant's own listing of his addresses of residence in this country as the applicant did not list an address in Cypress, California at part #33 of the Form I-687 application.

The applicant included an affidavit signed by [REDACTED] who indicated that he had personal knowledge relating to the applicant's residence in this country since being introduced to each other by a mutual friend [REDACTED] listed the applicant addresses of residence in the United States as follows: [REDACTED] Orange, CA, from 1981 to 1982; [REDACTED] #7, Orange, CA, from 1982 to 1984; [REDACTED], Cypress, CA, from 1984 to 1989; and, [REDACTED], Santa Ana, CA, from 1989 to August 3, 1990, the date the affidavit was executed. However, [REDACTED] listing of the applicant's addresses of residence in the United States does not match the applicant's own listing of his addresses of residence in this country because the applicant did not list an address in Cypress, California at part #33 of the Form I-687 application.

The applicant submitted an employment affidavit that is signed by [REDACTED] declared that he employed the applicant in his cleaning service from 1985 to 1989. However, [REDACTED] failed to provide the applicant's address of residence during that period he employed the applicant, did not state the applicant's duties, and did not declare whether the information was taken from company records as required by 8 C.F.R. § 245a.2(d)(3)(i). Although the applicant indicated that he had been employed in cleaning services from 1985 to 1989 at part #36 of the Form I-687 application where applicants were asked to list all employment in the United States since first entry, he failed to specify that [REDACTED] was his employer. The applicant failed to provide any explanation as to why [REDACTED] was not included in his listing of employers at part #36 of the Form I-687 application.

The applicant provided an employment affidavit signed by [REDACTED] who stated that he employed the applicant as a landscaping helper from 1981 to 1985. However, [REDACTED] failed to provide the applicant's address of residence during that period he employed the applicant and did not declare whether the information was taken from company records as required by 8 C.F.R.

§ 245a.2(d)(3)(i). While the applicant indicated that he was employed as a gardener and handyman from 1981 to 1985 at part #36 of the Form I-687 application where applicants were asked to list all employment in the United States since first entry, he failed to list [REDACTED] as an employer. The applicant failed to advance any explanation as to why [REDACTED] was not listed as an employer at part #36 of the Form I-687 application.

The applicant provided an affidavit that is signed by [REDACTED]. [REDACTED] noted that the applicant had been absent from this country for a month in November 1987 because of his father's serious illness. [REDACTED] declared that the applicant departed the United States from Los Angeles International Airport and subsequently returned to this country by crossing the border without inspection at San Ysidro, California. However, [REDACTED] failed to provide any direct, verifiable, and specific testimony relating to the applicant's residence in the United States for the requisite period.

The applicant also submitted photocopies of the following tax documents:

- A 1981 Form 1040A, U.S. Individual Income Tax Return, and a 1981 Form 540A, California Individual Tax Return, both of which are signed by the applicant and dated March 13, 1982;
- A 1982 Form 1040A, U.S. Individual Income Tax Return, and a 1982 Form 540A, California Individual Tax Return, both of which are signed by the applicant and dated April 12, 1983;
- A 1983 Form 1040A, U.S. Individual Income Tax Return, and a 1983 Form 540A, California Individual Tax Return, both of which are signed by the applicant and dated May 17, 1984;
- A 1984 Form 1040A, U.S. Individual Income Tax Return, and a 1984 Form 540A, California Individual Tax Return, both of which are signed by the applicant and dated April 2, 1985;
- A 1985 Form 1040A, U.S. Individual Income Tax Return, and a 1985 Form 540A, California Individual Tax Return, both of which are signed by the applicant and dated April 21, 1986;
- A 1986 Form 1040A, U.S. Individual Income Tax Return, and a 1986 Form 540A, California Individual Tax Return, both of which are signed by the applicant and dated May 11, 1987;
- A 1987 Form 1040A, U.S. Individual Income Tax Return, and a 1987 Form 540A, California Individual Tax Return, both of which are signed by the applicant and dated March 21, 1988; and,

- A 1988 Form 1040A, U.S. Individual Income Tax Return, and a 1988 Form 540A, California Individual Tax Return, both of which are signed by the applicant and dated April 29, 1989.

All of these tax returns list the applicant's address as "[REDACTED] Santa Ana, CA.," and his Social Security number as "[REDACTED]" However, as noted above the applicant failed to list any Social Security numbers at part #19 of the Form I-687 application where applicants were asked to list all Social Security numbers used. Additionally, the applicant indicated that he did not begin living at [REDACTED] in Santa Ana, California until an unspecified date after 1984 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 failed to provide any explanation for the conflicting information relating to both his address of residence and Social Security number.

Subsequently, on August 27, 2001, the applicant filed his Form I-485 LIFE Act application with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS). In support of his claim of continuous residence in the United States from prior to January 1, 1982, the applicant provided photocopies of previously submitted documentation including a photocopy of the original Form I-687 application previously filed on May 1, 1990. However, at part #33 of the photocopied 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] [REDACTED] in Cypress, California as his address of residence from 1984 to 1989. The fact that the applicant listed an address of residence for these years on the photocopied Form I-687 application that was not listed on the original Form I-687 application further undermines the credibility of the applicant's claim of residence in the United States for the requisite period.

On February 2, 2005, the district director issued a notice of intent to deny to the applicant informing him of CIS's intent to deny his application. The district director noted that the affidavits submitted in support of his claim of residence were not sufficient evidence to establish continuous unlawful residence in the United States from January 1, 1982 through May 4, 1988. In addition, the district director noted that the address of residence listed on the tax returns provided by the applicant did not match the addresses of residence and corresponding dates of residence listed by the applicant on his original Form I-687 application.

In response, both the applicant and counsel asserted that the applicant did not submit the tax returns for the years 1981 through to 1988 until some unspecified date in 1990. Counsel and the applicant contended that the tax returns all bore the [REDACTED] address in Santa Ana, California as the applicant's address of residence because that was the address where he was living when such returns were filed. Counsel declared that the affidavits and employment letters submitted by the applicant were sufficient to establish that he continuously resided in the United States since prior to January 1, 1982. Counsel provided copies of previously submitted documentation with the response.

The district director determined that the applicant failed to submit sufficient credible evidence demonstrating his 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 February 24, 2005.

On appeal, counsel and the applicant reiterate the claim that the applicant did not submit the tax returns for the years 1981 through to 1988 until some unspecified date in 1990. Counsel and the applicant assert that the tax returns all bore the [REDACTED] address in Santa Ana, California as his address of residence because that was the address where he was living when such returns were filed. However, the explanation put forth by counsel and the applicant cannot be considered as reasonable in light of the fact that none of the tax returns bear a date from 1990, but instead are dated March 13, 1982, April 12, 1983, May 17, 1984, April 2, 1985, April 21, 1986, May 11, 1987, March 21, 1988, and April 29, 1989, respectively. Further, counsel and the applicant fail to state any logical reason as to why the applicant would have dated the tax returns in this manner if such documents had been executed by the applicant on an unspecified date in 1990. Moreover, neither counsel nor the applicant provides any evidence to reflect that the tax returns were filed in 1990 as claimed with either the Internal Revenue Service or the state of California. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The 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).

Counsel declared that the affidavits and employment letters submitted by the applicant were sufficient to establish that he continuously resided in the United States since prior to January 1, 1982. However, the applicant submitted an original Form I-687 application on May 1, 1990 that at part #33 contained an incomplete and altered listing of his addresses of residence in the United States since prior to January 1, 1982. The applicant included two affidavits of residence in which both affiants attribute an address of residence to him for that period from 1984 to 1989 that the applicant himself did not include at part #33 of the original Form I-687 application. Although the applicant also provided two employment affidavits from individuals who claimed to have employed the applicant during the requisite period, the probative value of these employment affidavits is severely limited in that the applicant failed to specify the names of any employers at part #36 of the Form I-687 application. The employment letters and affidavits submitted by the applicant relating to his residence in the United States from prior to January 1, 1982 lack sufficient detail, contain little verifiable information, and conflict with critical elements of the applicant's own testimony relating to his continuous residence in this country for the requisite period.

With the Form I-485 LIFE Act application filed on August 27, 2001, the applicant submitted a photocopied Form I-687 application that included an address of residence that was not listed on the original Form I-687 application. The applicant himself has offered contradictory testimony relating to his addresses of residence in the United States by submitting an original Form I-687 application that is incomplete and altered at part #33, and subsequently submitting a photocopied Form I-687 application that included an address of residence at part #33 that was not listed in the original.

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. 582 (BIA 1988).

The absence of sufficiently detailed supporting documentation and the conflicting nature of testimony relating to the applicant's addresses of residence and employment during the period in question seriously undermine the credibility of the applicant's claim of residence in this country from prior to January 1, 1982, 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 his burden of proof in establishing that he or 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. 77.

Given the applicant's reliance upon documents with minimal or no probative value, it is concluded that he 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.

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