

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

**PUBLIC COPY**



22

FILE: [REDACTED]  
MSC 02 051 62572

Office: NEW YORK Date:

MAR 19 2007

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, New York, New York, 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: 1) not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988; and 2) exceeded the forty-five (45) day limit for a single absence from the United States during this period.

On appeal, counsel asserts 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 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. 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).

The applicant indicated on his Form I-687 application that he departed the United States on September 27, 1987 because his mother was ill and returned on October 28, 1987 with a non-immigrant visa. At the time of his LIFE interview on January 7, 2004, the applicant indicated that he departed the United States in June 1987.

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

- Three envelopes postmarked in 1983 and 1985 addressed to the applicant at [REDACTED] New York.
- A copy of his Ivory Coast passport, which reflects that on July 1, 1987, the applicant was issued a non-immigrant visitor visa that expired on June 30, 1988. The applicant was admitted to the United States on October 28, 1987.
- A notarized affidavit from [REDACTED] of Hartsdale, New York, who indicated that he has known the applicant since 1981 and attested to the applicant's New York residences at [REDACTED] from August 1981 to October 1987 and from November 1987 to July 1994 at [REDACTED].
- An affidavit notarized in October 1999 from a cousin, [REDACTED] of New York, New York, who attested to the applicant's New York residences at [REDACTED] from August 1981 to October 1987 and from November 1987 to July 1994 at [REDACTED].
- An affidavit notarized December 7, 1989 from [REDACTED] of Bronx, New York, who indicated that he met the applicant at a party in 1981 and attested to the applicant's New York residences at [REDACTED] from August 1981 to October 1987 and since October 1987 at 312 W. 109<sup>th</sup> Street.
- An affidavit notarized December 7, 1989 from [REDACTED] of Bronx, New York, who indicated that he met the applicant on [REDACTED] in 1981 selling goods, and attested to the applicant's New York residences at [REDACTED] from August 1981 to October 1987 and since October 1987 at [REDACTED].
- A notarized letter dated November 29, 1989 from [REDACTED] manager of Dong Jin Trading Co., Inc. in New York, New York, who indicated that the applicant has been a regular customer since 1981.
- A notarized letter dated November 28, 1989 from the manager of Hotel Bryant at [REDACTED] New York, New York, who attested to the applicant's residence at its facility from August 1981 to October 1987.

The applicant also provided envelopes postmarked in December 1988; however, said envelopes have no evidentiary weight as they were mailed subsequent to the requisite period.

The director issued a Notice of Intent to Deny dated January 21, 2004, which advised the applicant of the inconsistency regarding his departure date in 1987. The director noted that at the time the applicant was confronted with the discrepancy, the applicant "re-verified that you departed the United States in June 1987, and did not know where the date on the I-687 came from." The applicant was advised that his 1987 absence from the United States exceeded the 45-day limit for a single absence. The applicant was also advised of his failure to submit evidence of unlawful continuous residence during the requisite period, and that the affidavits presented

with his application failed to include telephone numbers in order for Citizenship and Immigration Services to verify the validity of each affiant's affidavit.

In response, counsel asserted that the director failed to consider the postmarked envelopes addressed to the applicant. Counsel argued that the envelopes are conclusive evidence that applicant was in continuous residence during the requisite period. Counsel provided the telephone numbers for [REDACTED] and [REDACTED]. Regarding the absence, counsel asserted, in part:

As an initial matter, the applicant informed the service, prior to the commencement of the interview that the date on the application was inaccurate and was permitted to correct it and signed next to the correction prior to the interview. Thus, the allegation that the applicant did not know where the date on the I-687 came from should not be considered as a basis for denial. He indicated that the person who completed the application for him made a mistake. He should not be penalized to typographical errors.

Regarding, the lack of evidence for his entry and continuous residence, counsel asserted, in part:

The applicant indicated that he first entered the United States illegally in 1981. Since he entered illegally in August 1981 there can be no other evidence of entry. Further more, in the absence of evidence suggesting the he was not in unlawful status during the period, the presumption is that he was.

In this instance, the applicant submitted evidence, including contemporaneous documents, which tends to corroborate his claim of residence in the United States during the requisite period. The district director has not established that the information in this evidence was inconsistent with the claims made on the application, or that it was false information. As stated in *Matter of E--M--*, *supra*, when something is to be established by a preponderance of evidence, the applicant only has to establish that the asserted claim is probably true. That decision also points out that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. The documents that have been furnished may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

The documentation provided by the applicant supports by a preponderance of the evidence that the applicant satisfies the statutory and regulatory criteria of entry into the United States before January 1, 1982, as well as continuous unlawful residence in the country during the ensuing time frame of January 1, 1982 through May 4, 1988, as required for eligibility for legalization under section 1104(c)(2)(B)(i) of the LIFE Act.

"Continuous residence" is defined in the regulations at 8 C.F.R. § 245a.15(c)(1), as follows:

*Continuous residence.* An alien shall be regarded as having resided continuously in the United States if:

- (1) No single absence from the United States has exceeded *forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed. [Emphasis added.]

The director's determination that the applicant had been absent from the United States for over 45 days was based on the applicant's own statement at the time of his interview that he departed the United States in June 1987 and did not return until October 28, 1987. The applicant's statement coupled with counsel's claim that the departure date on the Form I-687 was inaccurate are a strong indication that the applicant was outside the United States beyond the period of time allowed by regulation.

While not dealt with in the district director's decision, there must, nevertheless, be a determination as to whether the applicant's prolonged absence from the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I. & N. Dec. 808 (Comm. 1988) holds that *emergent* means "coming unexpectedly into being."

In other words, the reason must be unexpected at the time of departure from the United States and of sufficient magnitude that it made the applicant's return to the United States more than inconvenient, but virtually impossible. However, in the instant case, that was not the situation. There is no evidence to indicate that an emergent reason delayed the applicant's return to the United States within the 45-day period. The applicant's prolonged absences would appear to have been a matter of personal choice, not a situation that was forced upon him by unexpected events.

Accordingly, the applicant's June 1987 to October 28, 1987 absence exceeded the 45 day period allowable for a single absence, and interrupted his "continuous residence" in the United States.

The applicant has, therefore, failed to establish that he resided in the United States in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required by the statute, section 1104(c)(2)(B)(i) of the LIFE Act, and the regulation, 8 C.F.R. §§ 245a.11(b) and 245a.15(c)(1).

Accordingly, 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.