

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, DC 20529



U.S. Citizenship
and Immigration
Services

L2

PUBLIC COPY



FILE:  Office: Chicago
MSC 02 242 60777

Date: MAY 25 2007

IN RE: Applicant: 

PETITION: 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 the matter 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, Chicago, Illinois, 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, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel contends that the applicant has submitted sufficient evidence to the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) to establish that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988.

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 section 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 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 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)(v) states that attestations by churches, unions, or other organizations to the applicant's residence by letter must: identify applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

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 previously file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (Act) on September 4, 1990. At part #34 of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, businesses, etc., the applicant failed to list any information.

In support of his claim of residence in the United States since prior to January 1, 1982, the applicant submitted an affidavit that is signed by [REDACTED]. [REDACTED] stated that he was a friend of the applicant and that he had knowledge that the applicant resided in this country since 1986 except for a brief trip to India from June 1987 to July 1987. However, [REDACTED] failed to provide any testimony that the applicant resided in the United States from prior to January 1, 1982 to that date he first met the applicant in 1986.

Subsequently, on May 30, 2002, the applicant filed his Form I-485 LIFE Act application. The record shows that the applicant failed to include any additional evidence in support of his claim of continuous unlawful residence in this country since before January 1, 1982 to May 4, 1988.

The district director subsequently issued a notice to the applicant on October 28, 2003, informing him of CIS' intent to deny his Form I-485 LIFE Act application. The district director noted that the applicant had failed to submit sufficient evidence to corroborate his claim of continuous residence in this country from prior to January 1, 1982 to May 4, 1988. The applicant was granted thirty days to respond to the notice.

In response, the applicant submitted an affidavit signed by [REDACTED] who stated that the applicant stayed with his family at [REDACTED] in Elmhurst, New York when he visited New York in 1982 and 1983. However, [REDACTED] failed to provide any direct and specific testimony that the applicant resided in the United States during the requisite period.

The applicant included a letter containing the letterhead of [REDACTED] in Flushing, New York that is signed by [REDACTED] and dated October 21, 2003. In his letter, [REDACTED] declared that the applicant was a member of this organization in 1982 and 1983 during his tenure as secretary. However, [REDACTED] failed to provide a listing of the applicant's address(es) of residence during the

entire period he was a member of Adabi Sangam, Inc., in 1982 and 1983 as required under 8 C.F.R. § 245a.2(d)(3)(v). More importantly, the applicant failed to provide any explanation as to why he did not list his affiliation with this organization at part #34 of the Form I-687 application, where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, businesses, etc.

The district director concluded that the applicant failed to demonstrate that he resided in the United States from prior to January 1, 1982 to May 4, 1988 and, therefore, denied the Form I-485 LIFE Act application.

Counsel contends that the testimonial and documentary evidence provided by the applicant are sufficient to establish his unlawful residence in the United States for the period in question. Counsel's statements on appeal regarding the sufficiency of the evidence submitted by the applicant in support his claim of continuous residence in this country for the requisite period have been considered. However, the applicant failed to submit any evidence in support of his claim of residence in this country prior to January 1, 1982. Further, the evidence submitted by the applicant relating to his residence in the United States after such date lacks sufficient detail and contains little verifiable information.

The absence of sufficiently detailed supporting documentation seriously undermines the credibility of the applicant's claim of residence in this country for the requisite period. 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 and his own contradictory testimony, 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.