

**PUBLIC COPY**



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

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

12

[REDACTED]

FILE:

[REDACTED]

Office: CHICAGO

Date:

NOV 29 2007

MSC 02 235 60583

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:

[REDACTED]

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. Wienann, 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, 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 established that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. Specifically, the director determined that affidavits alone, in the absence of primary or secondary evidence, were insufficient to satisfy the applicant's burden of proof in these proceedings.<sup>1</sup>

On appeal, counsel contends that the applicant established that he was eligible to adjust status to that of legal permanent resident by submitting an affidavit detailing his life in the United States during the requisite period. Counsel argues that the applicant's failure to produce other documentation should not be detrimental due to the difficulty entailed in producing documentation from 18-20 years ago.

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).

On his Form I-687, Application for Status as a Temporary Resident, which he signed under penalty of perjury on August 10, 1990, the applicant claimed that he first entered the United States in January 1981, and claimed to live at the following addresses in New York City during the requisite period:

January 1981 to April 1984:  
May 1984 to July 1987:  
August 1987 to January 1988:  
March 1988 to Present:

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

- (1) Applicant's affidavit dated May 13, 2002, claiming that he entered the United States as a crewman in 1981, and that he initially stayed in motels because he had no relatives in the country. The applicant further claims that as an illegal alien, he was afraid to keep records thus explaining the lack of documentary evidence in the record.
- (2) Affidavit dated August 10, 1990 from [REDACTED] claiming that he has personally known the applicant since 1981. The affiant claims that he met the applicant in an

---

<sup>1</sup> Although the director incorrectly applied the regulation at 8 C.F.R. § 103.2(b) to the instant application, it is harmless error because the AAO evaluates the sufficiency of the evidence in the record according to its probative value and credibility as required at 8 C.F.R. § 245a.12(f).

African market located on 25<sup>th</sup> Street. No additional information, such as the address or addresses at which he knew the applicant, was provided.

- (3) Notarized letter dated July 17, 1990 from [REDACTED] clerk at the [REDACTED] located at [REDACTED] claiming that the applicant resided there from January 1981 to April 1984 with a friend who shared the room. The affiant provides no additional information regarding the source of this information, such as whether this information was taken from hotel records or whether the affiant knew the applicant in a personal capacity.
- (4) Notarized letter dated July 17, 1990 from the [REDACTED] located at Broadway and [REDACTED] claiming that the applicant lived there from May 1984 to July 1987. The letter is signed by [REDACTED],” and this person’s full name is not provided. The affiant provides no additional information regarding the source of this information, such as whether this information was taken from hotel records or whether the affiant knew the applicant in a personal capacity. The AAO notes that the body of the letter is identical in wording to that of the letter from the [REDACTED]
- (5) Notarized letter dated July 17, 1990 from [REDACTED] clerk at the [REDACTED] located at [REDACTED], claiming that the applicant lived there from August 1987 to July 1988. The affiant provides no additional information regarding the source of this information, such as whether this information was taken from hotel records or whether the affiant knew the applicant in a personal capacity. In addition, the body of the letter is identical in wording to that of the letters from the [REDACTED] and [REDACTED]
- (6) Letter dated August 10, 1990 from [REDACTED] executed by [REDACTED] Public Information, claiming that the applicant is a member of the Muslim Community and has been in the U.S. since January 1981. He further claims that the applicant attends Friday Jumah Prayer Services as well as other prayer services at the [REDACTED]. No detail regarding the source of this information is provided.
- (7) Rent receipt from [REDACTED], located at [REDACTED], for a one night stay from March 9 to March 10, 1988.
- (8) Rent receipt from [REDACTED] for April 4, 1988. The AAO notes that the receipt is for a one-hour rental.
- (9) Rent receipts from [REDACTED], [REDACTED], for room rentals on March 14, 1988 and March 26, 1988.
- (10) Rent receipts from [REDACTED], [REDACTED], for room rentals on March 22, 1988 and March 24, 1988.
- (11) Rent receipt from [REDACTED] for a room rental on April 4, 1988.

On May 6, 2004, CIS issued a Request for Evidence, requesting the applicant to forward proof of his unlawful status in the United States and his continuous physical presence in the United States from

January 1, 1982 to May 4, 1988 and November 6, 1986 to May 4, 1988, respectively. Counsel for the applicant advised that no further documentation was available. On July 23, 2004, CIS issued a Notice of Intent to Deny (NOID) the application. The district director noted that the record did not contain credible and verifiable evidence that the applicant continually maintained an unlawful status in the United States since before January 1, 1982 through 1988, as well as maintained continuous physical presence in the United States from November 6, 1986 through May 4, 1988. Neither counsel nor the applicant responded to the director's request.

The director denied the application on September 15, 2004, noting that there was insufficient evidence to show that the applicant entered and maintained continuous unlawful status in the United States from before January 1, 1982, the beginning of the qualifying period, through 1988, or that he had maintained continuous physical presence in the United States from November 6, 1986 through May 4, 1988. Although the director noted the applicant's own affidavit, the director noted there was no evidence of the applicant's entry prior to January 1, 1982 and insufficient evidence of his unlawful and continuous presence in the United States through 1988.

On appeal, counsel again asserts that the request to provide additional documentation was unreasonable due to the amount of time that had passed. No new evidence is submitted in support of the appeal.

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.

Although the applicant claims he entered the United States in 1981, 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. In support of his entry and his continuous unlawful presence in the United States from 1982 to 1988, the applicant relies on two affidavits, including one from [REDACTED] who allegedly met him at an African market in 1981. This affidavit, which includes no

additional information such as at what address he knew the applicant, the nature of their relationship, or his contact information, is insufficient to corroborate the applicant's claim. Although the applicant's affidavit claims that he entered illegally and without a passport as a crewmember in January 1981, no additional evidence is submitted in support of that claim.

The AAO notes that a notarized letter from the Hotel [REDACTED] claims that the applicant resided there from January 1981 to April 1984, as claimed by the applicant in his affidavit and on his Form 1-685. However, this letter, as well as the letters from the other hotels, is questionable. All three letters are identical in wording and font, and none of the three hotels include a phone number. Furthermore, the persons executing the letters provide no information regarding the basis of the information provided, such as whether it was obtained from hotel registry books or records, or whether they personally knew the applicant during his alleged residence. Finally, all three letters indicate that the applicant lived with a friend; however, no affidavit or letter from this alleged friend and roommate has been provided. 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. at 591. Absent a letter from BCS explaining the nature of this employment relationship, the AAO is left to question the credibility of these documents. If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Although the applicant does provide several rent receipts from 1988, the fact remains that the period from before 1982 through 1988 is not sufficiently documented, and the receipts for 1998 fail to demonstrate continuous presence and residency in the United States since they represent isolated periods. As stated above, the inference to be drawn from the documentation provided shall depend on the extent of the documentation. Although numerous letters have been submitted, the documents are inadequate and do not contain enough information to support a credible finding that the applicant was continually maintaining an unlawful status in the United States before 1982 to 1988.

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. *See* 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. As discussed above, the notarized letters and affidavit from [REDACTED] do not satisfy the above criteria.

Furthermore, the letter from [REDACTED] fails to satisfy the regulatory requirements. The letter omits the residence of the applicant during the period of his alleged membership, and further omits the origin of the information provided and the manner in which the [REDACTED] is acquainted with the applicant, as required by 8 C.F.R. §§ 245a.2(d)(3)(v)(D), (F) & (G).

The applicant has likewise failed to establish his continuous physical presence in the United States from November 6, 1986 to May 4, 1988. Although the applicant does provide a few rent receipts from 1988, the fact remains that the period from November 6, 1986 to May 4, 1988 is not fully documented and therefore, it cannot be concluded that the applicant was continually present in the United States during this entire period. As stated above, the inference to be drawn from the documentation provided shall depend on the extent of the documentation. The rent receipts submitted are sporadic and do not contain enough information to support a credible finding that the applicant was continuously present in the United States during the requisite period.

Although the director incorrectly applied the regulation at 8 C.F.R. § 103.2(b) to the instant application, it is harmless error because the AAO evaluates the sufficiency of the evidence in the record according to its probative value and credibility as required at 8 C.F.R. § 245a.12(f). Therefore, while the director incorrectly concluded that affidavits alone, in the absence of additional evidence, were insufficient to establish eligibility in this matter, the AAO has reviewed all documentation submitted and finds that the evidence contained in the record is simply insufficient to meet the burden of proof in these proceedings.

Given the absence of contemporaneous documentation and the reliance on affidavits 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 from January 1, 1982 through 1988. 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.