

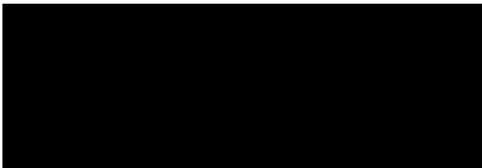
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, D.C. 20529



U.S. Citizenship
and Immigration
Services

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FILE:

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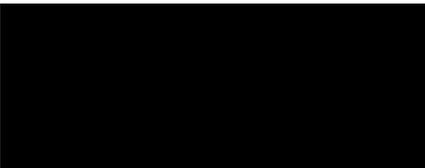
Applicant:



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. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to be "R. 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, Chicago, Illinois, 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 she had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the applicant submitted documentation that was sufficient to meet the standards set forth in the LIFE Act. Counsel asserts that the decision did not give a specific finding why the documentation submitted by the applicant were not credible.

It is noted that the director, in denying the application, did not set forth the specific reasons for the denial pursuant to 8 C.F.R. § 103.3(a)(1)(i). As such, the documentation submitted throughout the application process will be considered on 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).

Here, the submitted evidence is not relevant, probative, and credible. In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence:

- A notarized affidavit from [REDACTED] in Chicago, Illinois, who indicated that the applicant was employed as a waitress from January 15, 1985 through December 12, 1989.
- Notarized affidavits from [REDACTED] owners/landlords of [REDACTED], who attested to the applicant's residence at this address from December 1986 to November 1989.
- An undated letter from [REDACTED] Church in Chicago, Illinois, who indicated that the applicant has been attending services and other activities since spring 1981. The affiant asserted due to the applicant's [REDACTED], she did not join the fellowship, but because she received assistance in finding employment from members, "out of a sense of gratitude she used to come to some of our services."
- Notarized affidavits from [REDACTED] of Chicago, Illinois, who indicated they have known the applicant since 1981 and attested to the applicant's absence from the United States to Mexico from February 24, 1988 to March 15, 1988.
- Several envelopes postmarked during the requisite period and addressed to the applicant at [REDACTED].
- A notarized affidavit from [REDACTED], who indicated that he has known the applicant since "1986" and attested to the applicant's absence from the United States from May 19, 1987 to May 30, 1987.
- Additional notarized affidavits from [REDACTED], of Chicago, Illinois, who indicated that he has known the applicant since "1981" and attested to the applicant's absences from the United States from May 19, 1987 to May 30, 1987 and from February 24, 1988 to March 15, 1988. The affiant also indicated he was the landlord of [REDACTED] Illinois and attested to the applicant's residence at this address from February 1981 to December 1986.
- An undated letter from [REDACTED] of Supermercado Armando's in Chicago, Illinois, who attested to the applicant's employment as a cashier while she was residing at [REDACTED].
- An undated letter from [REDACTED] owner of Armando Food Mart in Chicago, Illinois, who attested to the applicant's employment as a cashier from September 1981 to November 1984. The affiant indicated there was no further record of the applicant's employment.
- A notarized affidavit from [REDACTED] of Illinois, who indicated that he has provided room and board for the applicant since February 14, 1988 at [REDACTED] Illinois.
- An undated letter from [REDACTED], administrator of Concord Plaza, a retirement community in Northlake, Illinois, who indicated that the applicant was employed in food service from September 1981 to November 1984.
- A letter dated May 2, 1991, from Mini Lebron, personnel manager of [REDACTED] Products Company, Inc. in Chicago, Illinois, who indicated that the applicant was employed as a general laborer from January 15, 1985 through December 23 1989.
- A letter from [REDACTED], a medical doctor in Chicago, Illinois, who indicated the applicant was a patient from 1987 to June 2003.
- A letter dated April 7, 2003 from [REDACTED], owner of [REDACTED] Salon in Chicago, Illinois, who indicated the applicant has been a client since 1981.

- An undated letter from Deacon S [REDACTED] of St. Francis of Assisi/Our Lady of the Angels in Chicago, Illinois, who indicated that the applicant has been a registered parishioner since the middle or early 1980's.
- A notarized affidavit from [REDACTED] of Chicago, Illinois, who indicated that she was a roommate of the applicant from February 1981 to December 1986 at [REDACTED]
- A notarized affidavit from [REDACTED]s of Chicago Illinois, who indicated that the applicant was employed as an occasional babysitter from April 1981 to September 1985.
- A letter dated December 20, 1990, from [REDACTED] of the [REDACTED] Illinois, who indicated the applicant has been a long-time resident of the Little Village Community and is a well respected member of the Millard Congregation Church.
- A letter dated April 8, 2003, from [REDACTED], an assistant to [REDACTED] of the [REDACTED] Illinois, who indicated that the applicant has been an active and productive member of the community since 1981. The affiant indicated that the applicant "helps out during cleanups and other activities held by the block Clubs."

In his Notice of Intent to Deny issued on April 16, 2004, the director advised the applicant that she did not provide sufficient primary or secondary evidence to establish her claimed residence. The director noted that the affidavits and other documentation had been taken into consideration; however, it was determined that the applicant had not established by a preponderance of evidence that she met the requirements to adjust her status under the LIFE Act.

Counsel, in response, asserted 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 asserted that due to the length of time that has passed, it was difficult for most people to produce primary evidence. Counsel claimed that the affidavits submitted by the applicant were credible and consistent.

While 8 C.F.R. § 245a.2(d)(3) sets forth specific criteria which affidavits of residence from employers and organizations should meet to be given substantial evidentiary weight, we look to *Matter of E-- M--*, *supra*, for guidance in determining the appropriate criteria for affidavits from other third party individuals.

Citizenship and Immigration Services (CIS) has determined that affidavits from third party individuals may be considered as evidence of continuous residence. Following the dicta set forth in *Matter of E-- M--*, *supra*, the affidavits would not necessarily be fatal to the applicant's claim, if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his or her knowledge for the testimony provided. In the instant case, the applicant has presented contradictory and inconsistent documents, which undermines her credibility. Specifically:

1. The record contains several Form I-687 applications signed and dated by the applicant on December 11, 1990, January 12, 1991, February 5, 1991, April 20, 1991, and June 20, 1991.¹ In the applications dated in December 1990 and January, February and April 1991, the applicant listed employment with [REDACTED] Food Mark and El Nuevo Leon during the

¹ At the time the applicant presented each application, she was given a different alien registration number. All the documentation submitted with these applications has been consolidated into the LIFE application.

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- A notarized affidavit from [REDACTED] of Chicago, Illinois, who indicated that she was a roommate of the applicant from February 1981 to December 1986 at [REDACTED]
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- A letter dated December 20, 1990, from [REDACTED] of the [REDACTED], Illinois, who indicated the applicant has been a long-time resident of the Little Village Community and is a well respected member of the Millard Congregation Church.
- A letter dated April 8, 2003, from [REDACTED], an assistant to [REDACTED] of the 22nd Ward in Chicago, Illinois, who indicated that the applicant has been an active and productive member of the community since 1981. The affiant indicated that the applicant "helps out during cleanups and other activities held by the block Clubs."

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