

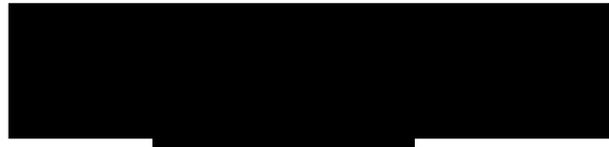
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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CHARLOTTE Date: **SEP 19 2007**
MSC 02 180 61815

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: Self-represented

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.

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, Atlanta, Georgia, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

Although the record contains a Form G-28, Notice of Entry of Appearance as Attorney or Representative, authorizing [REDACTED] to act on behalf of the applicant, [REDACTED] is not recognized as authorized or an accredited representative pursuant to 8 C.F.R. § 292.1(a).¹

The district director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, the applicant asserts that his employment in [REDACTED] and in Chicago is due to "my traveling and stays in different cities" The applicant states there are no contradictions "because of my relocations on temporary basis when I was on leave of absence from [REDACTED]"

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).

¹ See <http://www.usdoj.gov/eoir/statpub/raroster.htm> for the list of accredited organizations and representatives.

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] of Arden, North Carolina, who indicated to have first met the applicant in Daytona Beach, Florida in November 1985 and attested to the applicant's departure in 1987 for approximately three weeks to India. The affiant asserted that he has remained friends with the applicant since that time.
- A notarized affidavit from [REDACTED] of Asheville, North Carolina, who indicated he first met the applicant in May 1981 when the applicant first came to the United States and that they have met at social and religious gatherings since that time.
- A letter dated February 5, 2003, from [REDACTED] manager and owner of [REDACTED] in Arden, North Carolina, who indicated that the applicant was in his employ at the motel laboring in maintenance from February 1982 to December 1989. The affiant asserted that the applicant was provided free lodging and board during his employment.
- A undated letter from [REDACTED] projects manager of Lutheridge+Lutherock Ministries, Inc., in Arden, North Carolina, who indicated that he has known the applicant since 1981 and attested to the applicant's residence at [REDACTED]

The applicant indicated in a letter that he departed to India on July 15, 1987 due to an emergency and returned to the United States on August 10, 1987.

On April 17, 2003, the director issued a Notice of Intent to Deny, which advised the applicant that he had submitted insufficient evidence to establish his continuous residence in the United States during the requisite period. The applicant, in response, provided: 1) a five-month residential rental contract entered into on August 8, 1981 between [REDACTED] and the applicant for property at [REDACTED] in Buncombe County, North Carolina; 2) photocopied rent receipts dated September 1, 1981, December 6, 1981 and January 3, 1982; and 3) a letter dated December 18, 1989 from [REDACTED] manager and owner of [REDACTED], in Arden, North Carolina, who indicated that the applicant was in his employ at the motel laboring in maintenance since February 11, 1982. The affiant asserted that the applicant was provided free lodging and board during his employment.

The district director, in denying the application, concluded that the documents submitted by the applicant was at variance with the information initially provided on his Form I-687 application, thereby casting credibility issues on his claim to have continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. Specifically:

1. The applicant submitted an employment letter indicating he was employed at [REDACTED] Arden, North Carolina during the requisite period. However, the applicant claimed on his Form I-687 application to have been employed as a salesman at Duffy News from June 1981 to April 1985; as a cashier at Shoe Center from May 1985 to August 1987 and from October 1987 to 1990, the applicant claimed he was self-employed. The employment appeared to have taken place in New York and Illinois as the applicant claimed residence in these states during these timeframes on his Form I-687 application.
2. The residential rental contract listing residence in North Carolina contradicted his claim on his Form I-687 application to have resided in New York during this period.

The director also determined that based on his marriage certificate that indicated he was married on July 30, 1987, the applicant's trip to India in 1987 was not due to an emergency.

On appeal, the applicant asserts, in part:

In the decision dated 12/11/-03, it is mentioned that the evidence of my entry before 1/1/82 was not given by me but all the possible evidences were submitted and it is hard to come up with more documents tracking back over 20 years.

My employment in [REDACTED] and other locations such as in Chicago is due to my traveling and stays in different cities does not mean that there is any contradiction because of my relocations on temporary basis when I was on leave of absence from [REDACTED]

The trip to India in July 1987 was an emergency because I consider marriage as an emergency or urgency put of my life.

Whether the applicant departed the United States in order to get married or for an emergency is irrelevant, as the absence did not exceed the forty-five (45) day limit for a single absence from the United States. In addition, brief, casual, and innocent absences means temporary, occasional trips abroad as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.

The statements of the applicant on appeal regarding the amount and sufficiency of the applicant's evidence of residence and his inability to produce additional evidence of residence for the period in question due to the result of the passage of time have been considered. The AAO, however, does not find the applicant's statements to be plausible as he claimed, on his Form I-687 application, employment and residence in New York and Illinois during the *same time-frame* he indicated he was working and residing in North Carolina. In addition, no explanation has been provided why the employment at [REDACTED] and residence in North Carolina were not claimed on his Form I-687 application. Furthermore, [REDACTED] and [REDACTED] claimed to have known the applicant since 1981 and 1985, respectively; however, neither affiant provided the addresses where the applicant resided throughout the period in which the affiants claim to have known the applicant. The residential rental contract and rent receipts raise questions to their authenticity as the applicant did not claim residence in North Carolina during the requisite period on his Form I-687 application.

The applicant claimed employment and residences in New York and Illinois during the requisite period but provided no evidence to corroborate his claims. Simply 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)). Although item 36 of the Form I-687 application requests the applicant to list the full name and address of each employer during the requisite period, the applicant failed to provide complete information. As such, the applicant's alleged employment is not amenable to verification by Citizenship and Immigration Services.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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 regulation at 8 C.F.R. § 245a.12(e) provides that “[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods.” Preponderance of the evidence is defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black’s Law Dictionary 1064 (5th ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991). Given the numerous credibility issues arising from the documentation provided by the applicant, along with the applicant’s reliance on affidavits which do not meet basic standards of probative value and are of questionable veracity, it is concluded that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982 and resided in this country in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, 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.