

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

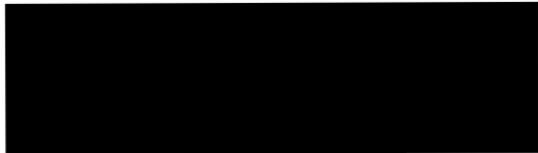
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, D.C. 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L2



FILE:

MSC 02 058 60596

Office: NEW YORK

Date:

APR 09 2008

IN RE:

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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 (AAO) on appeal. The appeal will be dismissed.

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, counsel asserts that the documentation and oral testimony were sufficient for the director to approve the applicant. Counsel further asserts that the decision is arbitrary considering the peculiar circumstances of this case and denial of the application is an abuse of discretion.

Section 1104(c)(2)(B) of the LIFE Act states:

- (i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act that were most recently in effect before the date of the enactment of this Act shall apply.

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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period. Here, the applicant has failed to meet this burden.

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

- An undated letter from [REDACTED], chaplain of Peace Reformed Healing Church in Bronx, New York, who indicated that the applicant has been a member of the church since October 30, 1981.
- A letter dated April 8, 1982, from [REDACTED], head pastor of Better Prayer Ministries International, Inc, in Newark, New Jersey, who indicated the applicant has been a member of the church since 1985.
- An undated letter from [REDACTED] of Rays Deli & Grocer in Bronx, New York, who indicated that the applicant was employed as a sales cashier from November 1984 to the present.
- A letter dated December 18, 1989, from L.P. Davis of New York, New York, who indicated the applicant was in his employ as an electrician from September 10, 1981, to October 20, 1984.
- A notarized affidavit from a relative, [REDACTED] of Bronx, New York, who attested to the applicant's residence at [REDACTED], New York since August 1981.
- Affidavits notarized April 27, 1990, from [REDACTED] of Bronx, New York and [REDACTED] of Manhattan, New York, who attested to the applicant's residence at [REDACTED], New York since August 1981.
- Envelopes postmarked May 3, 1982, and July 26, 1984, to the applicant's address at [REDACTED], New York.
- An affidavit notarized November 30, 1989, from [REDACTED] who indicated that the applicant resided with him at [REDACTED], New York, New York since August 1981. The affiant indicated that the rent receipts and household bills were in his name.
- An additional affidavit notarized June 21, 2004, from [REDACTED] of Bronx, New York, who amended his affidavit to indicate he has known the applicant "since 1985 through the Ghanaian Association meeting to present."
- A notarized affidavit from [REDACTED] of Ontario, Canada, who attested to the applicant's visit from September 27, 1987, to October 18, 1987.
- A notarized affidavit from [REDACTED] of Bronx, New York, who claimed to be a roommate and attested to the applicant's residence at [REDACTED], New York, New York from August 1981 to July 1994.

The director, in issuing her Notice of Intent to Deny dated March 29, 2006, advised the applicant that the employment letters presented lacked credibility. Specifically, a search of New York State public records revealed that the starting business date of [REDACTED] and the applicant's employment differed significantly. In addition, on September 15, 1992, in an attempt to verify his employment at Rays Deli & Groceries, the store manager was contacted and stated that neither the applicant nor [REDACTED] had been employed at the store. The applicant was also advised that he had provided inaccurate information and misrepresented certain facts and, therefore, given these inconsistencies, the affidavits presented failed to overcome the unavailability of both primary and secondary evidence.

The applicant was given 30 days in which to submit a rebuttal. However, neither counsel nor the applicant responded to the notice. Accordingly, on May 16, 2006, the director denied the application.

On appeal, the applicant submits an additional letter dated June 12, 2006, from [REDACTED], who reaffirmed the applicant's membership in the church since the mid 1980's.

Citizenship and Immigration Services (CIS) has determined that affidavits from third party individuals may be considered as evidence of continuous residence. *See Matter of E-- M--*, *supra*. In ascertaining the evidentiary weight of such affidavits, CIS must determine the basis for the affiant's knowledge of the information to which he/she is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

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 knowledge for the testimony provided. The statements issued by counsel have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant continuously resided in the United States since before January 1, 1982, through May 4, 1988.

1. The letters from [REDACTED] and [REDACTED] have little evidentiary weight or probative value as they do not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, neither affiant does explain the origin of the information to which he attests.
2. [REDACTED], in his initial affidavit, indicated the applicant resided with him since August 1981. However, in his subsequent affidavit, the affiant indicated to have met the applicant in 1985, and made no mention of the applicant residing with him during the requisite period.
3. The affidavits from [REDACTED] and [REDACTED] attesting to the applicant's residence since August 1981 at [REDACTED] have no probative value and evidentiary weight as [REDACTED] amended his affidavit to indicate that he first met the applicant in 1985. In addition, the affiants provided no details regarding the nature of their relationship with the applicant or the basis for their continuing awareness of the applicant's residence.
4. The postmarked envelopes raise questions as to their authenticity as [REDACTED] amended his affidavit to indicate that he first met the applicant in 1985, and, therefore, the applicant could not have been residing at [REDACTED] during the period the envelopes were allegedly postmarked.
5. As the employment letters from [REDACTED] and [REDACTED] have been discredited, it is reasonable to expect that the applicant would provide affidavits from these affiants to refute the director's findings. However, no new affidavits have been submitted from either affiant.

These factors tend to establish that the applicant utilized documents in a fraudulent manner in an attempt to support his claim of residence in the United States during the requisite period. By engaging in such an action, the applicant has irreparably harmed his own credibility as well as the credibility of his claim of continuous residence in the United States for requisite period.

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).

Given the credibility issues arising from the documentation provided by the applicant, it is determined 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.