

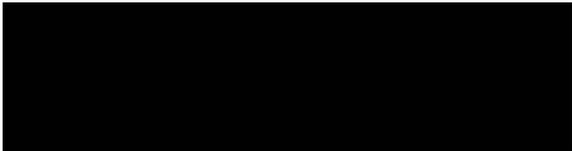


U.S. Citizenship
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FILE: [REDACTED]
MSC-02-110-61327

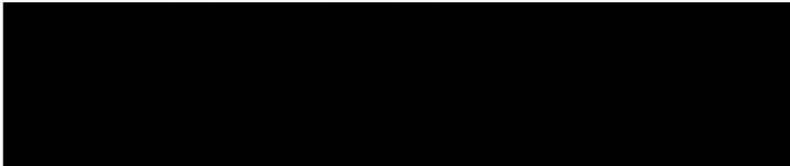
Office: LOS ANGELES

Date: **APR 23 2008**

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has 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. 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, Los Angeles. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant failed to overcome the grounds for denial expressed in the Notice of Intent to Deny (NOID). Specifically, the director found that the documents submitted by the applicant failed to establish that the applicant entered the United States before January 1, 1982 and resided in a continuous unlawful status since that date through May 4, 1988. The director identified apparent inconsistencies in the applicant's account of his first entry into the United States. The director also stated that the applicant's affidavits appeared to be self-serving.

On appeal, prior counsel for the applicant stated that the applicant's response to the NOID clarified the apparent inconsistencies in the applicant's accounts of his first entry into the United States. Counsel also indicated that the apparent inconsistency does not affect the applicant's eligibility for permanent resident status. Counsel asserted that four affidavits submitted by the applicant demonstrate that the applicant resided in New York until the latter part of 1986. Counsel stated that the director failed to address reasons why the affidavits presented failed to overcome the grounds for denial as stated in the NOID, and counsel asserted that the director failed to examine the affidavits to determine their probative value. Counsel also raised the difficulty of obtaining documentation as an undocumented individual. Lastly, counsel stated that the director's point of view that the applicant's affidavits are self-serving is not sufficient or a valid cause for denial of the application.

An applicant for permanent resident status under Section 1104 of the LIFE Act 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 under the provisions of Section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation and 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, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States from prior to January 1, 1982 through May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-485 Application to Register Permanent Resident or Adjust Status, to Citizenship and Immigration Services (CIS) on January 18, 2002. The record also includes a Form I-687 Application for Status as a Temporary Resident, submitted by the applicant on January 5, 2006. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant listed the following addresses during the requisite period: [REDACTED], Elmhurst, New York from February 1982 to April 1983; [REDACTED], Brooklyn, New York from August 1981 to March 1983; 61 – [REDACTED] New York, New York from March 1983 to December 1985; [REDACTED] Pembroke Pines, Florida from May 1985 to December 1985; and [REDACTED], Brooklyn, New York from January 1986 to December 1989. This information is found to be internally inconsistent. Specifically, the applicant indicated that he was living at both the [REDACTED] address and the [REDACTED] address during the period from February 1982 to March 1983. In addition, the applicant indicated that he was living at both the [REDACTED] address in New York and at the [REDACTED] in Florida during the period from May 1985 to December 1985. These inconsistencies call into question whether the applicant actually resided in the United States during the requisite period.

At part #32 of the applicant's Form I-687, where applicants were asked to list all absences from the United States since entry, the applicant listed only an absence to see his family in India from February to March 1988 during the requisite period. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant listed the following positions: Sales worker for Maharaja Travel from September 1983 to January 1985; sales worker for Pharos Travel & Tourism from March 1982 to June 1983; sales worker for Amocco from July 1985 to 1987; and self-employed owner from 1987 to 1990.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided multiple attestations. The applicant provided an attestation from Tajmul Rana,

which states that the affiant met the applicant in 1982 through a friend who used to work with the applicant. This affidavit fails to state that the applicant resided in the United States during the requisite period.

The applicant submitted an affidavit from [REDACTED] which states that the affiant met the applicant through the affiant's brother in 1983. The affiant stated that the affiant rented a room to the applicant from 1983 to December 1985. The affiant stated that the applicant was working at a grocery store in Jamaica, Queens. This information is inconsistent with the applicant's Form I-687, where he failed to list any employment at a grocery store during the requisite period. The affiant also stated that the applicant left the country for one month while he was living with the affiant, "around May 1985." This information is also inconsistent with the applicant's Form I-687, where the applicant listed only one absence from the United States during the requisite period, from February to March 1988. These inconsistencies call into question whether the affiant can actually confirm that the applicant resided in the United States during the requisite period.

The applicant provided an affidavit from [REDACTED], which states that the affiant shared an apartment with the applicant at the [REDACTED] address from February 1982 to April 1983. The affiant stated that the applicant was working at a gas station in Brooklyn, and then moved to a grocery store in Jamaica, New York. This information is inconsistent with the applicant's Form I-687, where the applicant indicated he did not begin working at the gas station until July 1985, rather than sometime between February 1982 and April 1983, and where the applicant failed to indicate he worked at a grocery store during the requisite period. These inconsistencies call into question whether the affiant can actually confirm that the applicant resided in the United States during the requisite period.

The applicant provided an affidavit from [REDACTED] which states that the affiant has known the applicant since late 1981. The affiant stated that he first met the applicant at a gas station in Brooklyn. The affiant described the nature of his contacts with the applicant, including visiting friends and playing cards. However, the affiant failed to state that the applicant resided in the United States at any time other than late 1981.

The applicant provided an affidavit from [REDACTED], which states that the affiant has known the applicant since 1984, when the applicant was living with "his friend [REDACTED]." The affiant stated that the applicant also used to come to [REDACTED] in Brooklyn, New York. This affidavit fails to state that the applicant resided in the United States at any time other than 1984. This affidavit also fails to provide detail regarding how the affiant met the applicant, their frequency of contact, and any periods in which the applicant was absent from the United States. As a result, this affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant provided an affidavit from [REDACTED], which states that the affiant has known the applicant since 1982 when the applicant lived with the affiant's friend, [REDACTED], in Elmhurst on [REDACTED]. The affiant stated, "Thereafter, I would meet [the applicant] when we all got together and played cards, ate and had drinks in his apt. [sic]" This affidavit fails to state that the applicant resided in the United States at any time other than 1982. In addition, this affidavit lacks detail regarding the

frequency of contact between the affiant and the applicant, and any periods in which the applicant was absent from the United States. As a result, this affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant provided a declaration from [REDACTED], president of [REDACTED], which states that the declarant has known the applicant since 1983 when the applicant was working with Maharaja Travel, in New York. This declaration fails to state that the applicant resided in the United States at any time other than 1983. This declaration also fails to provide detail regarding how the declarant met the applicant, their frequency of contact, and any periods in which the applicant was absent from the United States. As a result, this declaration is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant submitted a declaration from [REDACTED], manager of Pharos Travel & Tourism Inc., which states that the applicant worked as a salesman for airline tickets from March 1982 to June 1983. This declaration does not conform to regulatory standards for letters from employers as stated in 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the declaration does not include the applicant's address at the time of employment, whether or not the information was taken from official company records, where the records are located, and whether CIS may have access to the records. Therefore, this declaration will be given very little weight.

The record also includes a Form I-687 application submitted by the applicant on December 20, 1989. At part #33 where applicants were asked to list all residences in the United States since first entry, the applicant listed only [REDACTED], Miami, Florida, for five months. This information is inconsistent with the most recent Form I-687, in that it fails to indicate that the applicant lived in New York during the requisite period, as indicated on the most recent Form I-687. At part #35 where applicants were asked to list absences from the United States since entry, the applicant listed only a trip to India to meet relatives from May to June 1985. This is inconsistent with the most recent Form I-687, where the applicant listed only an absence to see family in India from February to March 1988. At part #36 of the 1989 Form I-687 where applicants were asked to list all employment in the United States, the applicant listed only an attendant position at Amoco Gas in Brooklyn, and did not specify his dates of employment. This is inconsistent with the most recent Form I-687 where the applicant also listed positions in the travel industry and self-employment during the requisite period. These inconsistencies cast serious doubt on the applicant's claim to have resided in the United States during the requisite period.

In denying the application the director determined that the applicant failed to overcome the grounds for denial expressed in the Notice of Intent to Deny (NOID). Specifically, the director found that the documents submitted by the applicant failed to establish that the applicant entered the United States before January 1, 1982 and resided in a continuous unlawful status since that date through May 4, 1988. The director identified apparent inconsistencies in the applicant's account of his first entry into the United States. The director indicated in the NOID that the applicant stated in his interview with an immigration officer that he entered the United States in August 1981 through El Paso, Texas; came from India via Frankfurt with Mexico as his destination; and boarded a plane in El Paso, Texas to go to New York. The director also indicated that the applicant stated in an affidavit

dated December 20, 1989 that the applicant made his "way up to New York" after entering the United States at the border at El Paso, Texas. The director found that the applicant's statement in his affidavit indicated or suggested travel overland. The applicant's oral and written statements do not appear to be inconsistent. The statements tend to indicate that the applicant flew from India via Frankfurt to Mexico; crossed the border into the United States at El Paso, Texas; and then flew to New York from El Paso. The applicant's claim that he made his "way up to New York" from El Paso does not appear to be inconsistent with his claim to have flown from El Paso to New York. Therefore, the director is found to have erred in indicating that the applicant's statements regarding his first entry into the United States were inconsistent.

The director also stated that the applicant's affidavits appeared to be self-serving. Since any evidence submitted by the applicant with the potential to support his claim of eligibility for permanent resident status could be construed as self-serving, the director's statement is found to be in error.

The director's errors are harmless because the AAO conducts a *de novo* review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at LIFE 8 C.F.R. § 245a.12(f). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

On appeal, counsel for the applicant stated that the applicant's response to the NOID clarified the apparent inconsistencies in the applicant's accounts of his first entry into the United States. Counsel also indicated that the apparent inconsistency does not affect the applicant's eligibility for permanent resident status. Counsel asserted that four affidavits submitted by the applicant demonstrate that the applicant resided in New York until the latter part of 1986. Counsel stated that the director failed to address reasons why the affidavits presented failed to overcome the grounds for denial as stated in the NOID, and counsel asserted that the director failed to examine the affidavits to determine their probative value. Counsel also raised the difficulty of obtaining documentation as an undocumented individual. Lastly, counsel stated that the director's point of view that the applicant's affidavits are self-serving is not sufficient or a valid cause for denial of the application.

In summary, the applicant has submitted attestations that fail to confirm that the applicant resided in the United States during the requisite period, lack sufficient detail, are inconsistent with the most recent Form I-687 application, or do not conform to regulatory standards. The affidavit from [REDACTED] fails to confirm that the applicant resided in the United States during the requisite period. The affidavits from [REDACTED] hi and [REDACTED] are inconsistent with the most recent Form I-687. The affidavit from [REDACTED] fails to confirm that the applicant resided in the United States at any time other than late 1981. The affidavits from [REDACTED] and [REDACTED], and the declaration from [REDACTED] lack sufficient detail. The declaration from [REDACTED] does not conform to regulatory standards.

The absence of sufficiently detailed and consistent supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the contradictory statements contained in the applicant's Form I-687 applications and supporting documentation, and the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from before January 1, 1982 through May 4, 1988 as required under both Section 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant is, therefore, ineligible for permanent resident status under the LIFE Act on this basis.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.