

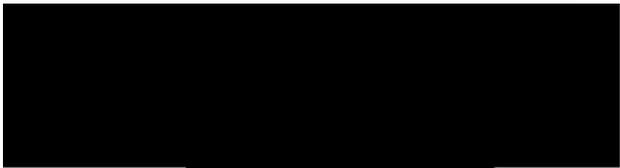


U.S. Citizenship
and Immigration
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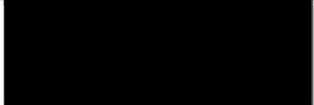
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FILE:



Office: NEW YORK

Date: FEB 27 2008

MSC 02 344 60693

IN RE:

Applicant:



PETITION: 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 PETITIONER:



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, New York, 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 he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988.

On appeal, counsel contends that the director's decision was arbitrary and demonstrated a prejudicial abuse of discretion as it failed to evaluate the evidence submitted. Counsel contends that the evidence submitted was more than sufficient to meet the applicant's burden of proof. In support of this contention, counsel submits a brief and additional evidence.

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).

When something is to be established by a preponderance of the evidence it is sufficient that the proof establish that it is probably true. *See Matter of E-- M--*, 20 I&N Dec. 77 (Comm. 1989).

Although 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).

The record contains evidence, in the form of a entry stamp in the applicant's passport as well as his own statements in his interview on April 13, 2004, that he first entered the United States on a B-1 visa on August 24, 1981. On his Form I-687, Application for Status as a Temporary Resident, which he signed under penalty of perjury, he claimed that since his entry in August 1981, he resided at [REDACTED] in Brooklyn. He further listed his employers in Section 36 of this form as follows:

September 1981 to June 1983:	Burke's Record & T.V.
August 1983 to October 1985:	Cue Variety & Hardware Store
November 1985 to Present:	Heron Home & Healthcare Personnel Agency

The applicant also submitted the following evidence:

- (1) Copy of applicant's passport, showing two entry stamps into the United States on August 24, 1981 and November 4, 1985.

- (2) Applicant's affidavit dated August 2, 2002, claiming that he first entered the United States on a B-1 visa on August 24, 1981, and remained there illegally until he left in October 1985 to visit his father. He further claims that he returned in November 1985, and has not been absent from the United States for more than 45 days.
- (3) Affidavit dated December 20, 1989 by [REDACTED] claiming that she has known the applicant as a friend since August 1981.
- (4) Affidavit dated December 30, 1989 by [REDACTED], claiming that he has known the applicant as a friend since August 1981.
- (5) Affidavit dated December 30, 1989 by [REDACTED] claiming that he has known the applicant as a friend since August 1981.
- (6) Affidavit dated January 3, 1990 by [REDACTED], claiming that she has known the applicant as a friend since August 1981.
- (7) Handwritten letter dated December 4, 1989 from Hugh Hunte of Cue Variety & Hardware Store, claiming that the applicant worked for the company from August 1983 to October 1985.
- (8) Letter dated December 8, 1989 from [REDACTED] Director of Heron Home & Health Care Personnel Agency, claiming that the applicant worked for the company from November 1985 to the present.
- (9) Letter dated November 30, 1989 from [REDACTED] of Burke's Record & T.V., who claims that the applicant was in training with the company as an Electronic Technician from September 1981 to June 1983.
- (10) Marriage certificate issued by the City of New York, Office of the County Clerk, showing the applicant was married to [REDACTED] in New York on April 7, 1987.
- (11) Second letter from [REDACTED], Director of Heron Home & Health Care Personnel Agency dated July 19, 1988, claiming that the applicant worked for the company from November 1985 to the present.
- (12) Copies of applicant's pay stubs, issued by St. Luke's Roosevelt Hospital Center, for the periods ending April 19, 1986, November 1, 1986, January 24, 1987, May 2, 1987, May 16, 1987, June 27, 1987, September 5, 1987, September 19, 1987, October 17, 1987, November 14, 1987, January 9, 1988, January 23, 1988, February 6, 1988, February 20, 1988, March 19, 1988, and April 2, 1988.
- (13) Handwritten letter dated July 25, 1988 from [REDACTED] claiming that her son, the applicant, and his wife reside with her at [REDACTED].

The director found the initial evidence insufficient, and subsequently sent the applicant a notice of intent to deny, which requested that the applicant submit additional evidence of continuous unlawful residence in the U.S. from January 1, 1982 through May 4, 1988. Specifically, the director noted that the only

evidence prior to 1987 consisted of affidavits, which the director determined were insufficient to establish the applicant's unlawful presence. The director also noted that the manager of Burke's Record & T.V., when telephoned in reference to his letter on behalf of the applicant, stated that he did not know the applicant. The director also noted that despite the applicant's affidavit and statements on Form I-687, it was noted that in his interview, he claimed to have departed the United States twice since his arrival in August 1981, claiming that the first departure took place in September 1981 and that he did not return until 1982. Finally, the director noted that in a separate Petition for Alien Relative (Form I-130) application in which he was the beneficiary, he claimed on his Biographic Information sheet to reside at [REDACTED], Leighton, England from September 1981 to November 1985, and that he worked as a printer for Mathew, Smith & Labworth from 1979 to November 1985. Noting that the duration of his alleged employment and residence in London corresponded with the entry stamp in the applicant's passport dated November 4, 1985, further evidence was requested to clarify these inconsistencies.

In a response dated December 3, 2003, counsel contended that the applicant only left the United States once in October 1985 and returned again on November 4, 1985, contrary to the director's findings. Counsel further claimed that the applicant was nervous at his interview, and therefore gave incorrect information. She also provides additional documentation, including an affidavit by the applicant allegedly executed in 2002 which claims that the contention on Form I-130, where he claimed to live and work in England, was erroneous and that he provided the false statement because he feared to state otherwise would render him ineligible for permanent residence.

In addition, the following new affidavits were submitted:

- (1) Affidavit dated April 6, 2005 by the applicant, who claims that he was nervous at the interview in general and due to a bomb scare, and claims that this is the reason he provided allegedly false information during his April 13, 2004 interview. He claims he only left the United States once from October to November 1985.
- (2) Affidavit dated March 31, 2005 by [REDACTED] claiming that he knew the applicant through his friend, [REDACTED] and that he resided in the United States since 1981
- (3) Affidavit dated March 31, 2005 by [REDACTED] claiming that he knew the applicant through his friend, [REDACTED], and that he met him when he came to the United States from England in 1981.

The director denied the application on September 21, 2005, noting that despite counsel's detailed response and the additional documentation submitted, the serious unresolved inconsistencies in the record rendered it impossible to approve the application. On appeal, counsel again asserts that the applicant has met his burden of proof, and the director's decision and disregard of certain evidence was arbitrary and prejudicial.

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

While the AAO concurs that there is evidence of the applicant’s presence in the United States from 1987 onward (and some pay stubs from 1986 suggest physical presence at that point as well, contrary to the director’s statements in the denial), the applicant’s continuous unlawful residence and physical presence in the first two-thirds of the requisite period is what is in question. The applicant in this case claims that he has resided continuously in the U.S. since August 1981. Nevertheless, he has only been able to provide CIS with a handful of affidavits and informal letters from alleged employers in support of his claim of residence.

Although the applicant claimed during his interview on April 13, 2004 that he entered the United States on August 24, 1981 and remained there until October 1985, the record contains serious inconsistencies that challenge the veracity of this statement. The applicant’s own claim in the interview, where he departed the U.S. twice during the relevant period, contradicts counsel’s claims and the claims set forth on Form I-687. According to the regulation at 8 C.F.R. § 245a.15(c)(1), no single absence from the United States can exceed forty-five days without interrupting continuous residency. Therefore, if the applicant’s statement in his April 13, 2004 interview is in fact true, he would have been absent from the United States for a period of several months, thereby easily exceeding the 45 day limit for a single absence.

However, numerous other inconsistencies exist in the record that create further confusion. The applicant claimed on his Biographic Information sheet (Form G-325A) to reside at [REDACTED] Leighton, England from September 1981 to November 1985, and that he worked as a printer for Mathew, Smith & Labworth from 1979 to November 1985. While he later claimed that falsely provided these statements and that he in fact was in the United States during this period, the AAO is unable to ascertain the veracity of this statement. The applicant admits that he provided false statements on Form G-325A in order to procure an immigration benefit, yet urges the AAO to accept his current statements offer to refute the director’s findings as truth. However, it is virtually impossible to authenticate any of these statements since no independent evidence is submitted in the record to support the applicant’s claims. It is

incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). 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. *Id.* at 591 (BIA 1988).

Counsel argues that this conclusion by the director is erroneous, since the record contains numerous affidavits and employment letters attesting to the applicant's presence in the United States. The AAO, however, agrees with the director's conclusions with regard to the value of this evidence. First, the employment letters fail to comply with the requirements of 8 C.F.R. § 245a.2(3)(i), which requires specific elements to be present in letters from employers in lieu of actual payroll records. For example, the letter should outline the applicant's position, periods of layoff, whether the information provided is taken from official company records and whether CIS may have access to those records and where they are located. The employment letters provided omit most of this information, and most importantly, the manager of Burke's Record & T.V., where the applicant claimed to work from September 1981 to June 1983, claimed he did not know the applicant when called for a reference. This further sheds doubt on the applicant's claim that he was in fact present in the United States during that period.

Furthermore, despite the number of letters submitted from previous employers, they all lack the basic elements required by 8 C.F.R. § 245a.2(3)(i). For example, the letter from [REDACTED], in addition to the contradictions discussed above, fails to state the applicant's address during the period of alleged employment, his duties with the company, and whether such information was taken from official company records. Similarly, the letter from G & S Electric, which independently raises questions regarding whether [REDACTED] was the actual affiant, fails to provide details regarding his duties with the company as well as whether the information provided was taken from official corporate records. Furthermore, it is not on company letterhead. The minimal and conflicting information contained in these letters raises doubts with regard to the credibility of the application as a whole.

As stated above, the inference to be drawn from the documentation provided shall depend on the extent of the documentation. Although several affidavits of acquaintances have been submitted, they omit critical information and are not probative.

Counsel again alleges that the director arbitrarily concluded that the affidavits provided were insufficient without properly providing the basis upon which he had reached these conclusions. 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.

The affidavits submitted in support of this application fall far short of meeting the above criteria. The two affidavits of [REDACTED], and [REDACTED], and the one affidavit of [REDACTED] merely claim that they have known the applicant since 1981. They do not state the circumstances surrounding their acquaintance or the origin of the information to which they attest. In addition, all three of their affidavits signed in 1989 state the identical phrase "We have maintained friendship since the above dates and have continued our friendship." The boilerplate recitation, without providing details of their relationship, is of little probative value in this matter. Therefore, the brief and somewhat generic statements set forth in these affidavits fail to conform to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3).

Finally, the affidavits and letter of [REDACTED] further confuse the application. In her handwritten letter dated July 25, 1988, she claims that the applicant is her son. However, the applicant's birth certificate lists a different woman as his mother, and his Form I-687 states that she was deceased in 1969. It is further noted that in her affidavit dated December 20, 1989, she claims that she has been the applicant's friend since August 1981. This further casts doubt on the validity of all claims and attestations provided in support of the application.

A few errors or minor discrepancies are not reason to question the credibility of an alien seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003). However, anytime a petition includes numerous errors and discrepancies, and the petitioner fails to resolve those errors and discrepancies after CIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the petitioner's assertions. Again, doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591. In this case, the discrepancies and errors catalogued above lead the AAO to conclude that the evidence of the applicant's eligibility is not credible. Accordingly, the petitioner has not established the beneficiary's eligibility for the requested immigrant visa classification.

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 since before January 1, 1982 through May 4, 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.