

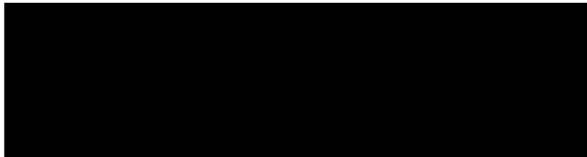
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U.S. Citizenship  
and Immigration  
Services

L2



FILE:



Office: NEW YORK

Date:

**JUL 31 2008**

MSC-02-232-61758

IN RE:

Applicant:



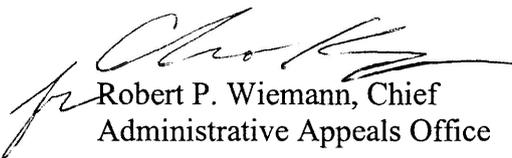
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:

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

The district director determined that the applicant had failed to establish residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988 as required by section 1104(c)(2)(B) of the LIFE Act. The district director concluded that the applicant was not eligible to adjust to permanent residence under section 1104 of the LIFE Act, and, therefore, denied the Form I-485 LIFE Act application.

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. Section 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b).

“Continuous unlawful residence” is defined at 8 C.F.R. § 245a.15(c)(1), as follows:

An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded *forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed.

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 212(a) of the Immigration and Nationality Act (Act), 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).

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 to May 4, 1988, the submission of any other relevant document including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

8 C.F.R. § 245a.2(d)(3)(v) states that attestations by churches, unions, or other organizations to the applicant's residence by letter must: identify applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of information contained in the attestation.

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 to be decided on appeal is whether the applicant has submitted sufficient credible evidence to meet his or her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.<sup>1</sup>

In support of his claim of continuous residence in the United States from prior to January 1, 1982, the applicant submitted a form affidavit from [REDACTED] dated September 25, 1991. The affiant indicated that he has personally known the applicant since October 1981. However, he did not indicate that he has any direct, personal knowledge of his continuous residence in this country for the duration of the requisite period. He offered no specific information regarding how frequently and under what circumstances he saw the applicant during the relevant period, nor did he provide any relevant details regarding the applicant's residence in the United States beyond their initial meeting. This affidavit will be given nominal weight.

The applicant also submitted a letter printed on “Popular Pharmacy” letterhead. The signature is illegible. The letter indicated that the applicant worked at the pharmacy from October 1981 until September 1982, however, it also fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant’s address at the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether CIS may have access to the records; if records are unavailable, an affidavit form-letter stating that the employment records are

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<sup>1</sup> In this case the Form I-290B is not signed by the applicant, but rather by [REDACTED] who identifies himself as the applicant’s attorney of record and submits a Form G-28, Notice of Entry of Appearance of Attorney or Representative, indicating that he is authorized to represent the applicant. However, on May 7, 2008 the Board of Immigration immediately suspended [REDACTED] from the practice of law before the Board, the Immigration Courts and DHS. This action was because on April 7, 2008, in the U.S. District Court for the Southern District of New York, [REDACTED] was found guilty of a serious crime relating to his immigration law practice. Specifically, he was found guilty of one count of willfully causing the subscription of an immigration document containing a material false statement and presenting an immigration document containing a false statement, in violation of 18 USC §1546(a) and 2. Therefore, because [REDACTED] is no longer authorized to practice before DHS, the appeal will be directly addressed to the applicant. ■

unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer's willingness to come forward and give testimony if requested. The letter does not include much of the required information and can be afforded minimal weight as evidence of the applicant's residence in the United States for the duration of the requisite period.

The record also contains envelopes that were apparently sent to the applicant via air mail in 1981. They refer to the address [REDACTED]. They provide some evidence of the applicant's residence in the United States during 1981.

A review of the record reveals that the applicant previously filed a Form I-589 Request for Asylum in the United States with the Service on November 6, 1989. On the Form I-589 Request for Asylum, the applicant specifically stated that in 1984 "after the attack on the Golden Temple" he was harassed and interrogated by Indian government authorities and he moved to New Delhi. He departed his country of nationality in April 1989 and that he traveled through London for two days in transit to the United States. This information contradicts the applicant's claim to have resided in the United States since 1981. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. The applicant has not addressed this inconsistency on appeal.

The absence of sufficiently detailed supporting documentation and the existence of conflicting testimony seriously undermine the credibility of the applicant's claim of residence in this country for the requisite period, as well as the credibility of the documents submitted in support of such claim. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he has resided in the United States since prior to January 1, 1982 through May 4, 1988 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.12(e) and *Matter of E- M-*, 20 I&N Dec. 77.

Given the applicant's reliance upon documents with minimal or no probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988 as required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis.

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