



U.S. Citizenship  
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Services

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FILE:



Office: NEW YORK

Date: **JUN 02**

MSC 02 138 61005

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. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter 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.

*for Michael T. Kelly*  
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 failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status for the requisite statutory time period.

On appeal, counsel for the applicant asserts that the applicant entered the United States on December 15, 1981, returned to Poland on November 26, 1985, and re-entered the United States on December 30, 1985 on a B-2 visitor visa. Counsel asserts that affidavits and the applicant's Form I-687 filed on May 29, 1990 contradicts the director's June 13, 2006 Notice of Intent to Deny (NOID), the application and the director's decision.

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 (INA) 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 regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The Form I-485 that is the subject of this appeal was submitted on February 15, 2002. A Form G-325, Biographic Information, dated January 14, 2002 is appended to the Form I-485. The Form G-325 lists the applicant's address from December 1981 to June 1990 as [REDACTED], Jersey City, New Jersey. The record also contains two Forms I-687. A handwritten but unsigned Form I-687 filed June 2, 1990 lists the applicants addresses during the December 1981 to June 1990 time period as: (1) [REDACTED] Lakewood, New Jersey from December 1981 to October 19, 1985 and (2) [REDACTED] Jersey City, New Jersey from December 1985 to the date the application was filed. The June 2, 1990 Form I-687 indicates the applicant left the United States on November 26, 1985 and returned to the United States December 30, 1985. Other information in the record (the applicant's visa and Form I-94) reflects that the applicant obtained a nonimmigrant visa in Poland on December 4, 1985 and entered the United States on December 30, 1985 as a B-2 visitor. The record also contains a typed and signed<sup>1</sup> Form I-687 filed March 20, 1990. The March 20, 1990 Form I-687 lists the applicant's address as [REDACTED], New York, New York from September 1981 to January 1990.

The record also contains a number of letters and affidavits submitted to establish the applicant's residence from 1981 to 1988:

- A March 19, 1990 affidavit signed by [REDACTED] who declares that he has known the applicant since September 1981, that he has been a resident of Florida since April 1981, and who identifies the applicant's current address as in Miami, Florida. The affiant does not provide the applicant's residence for the 1981 to 1988 time period and does not indicate how he met the applicant. The record contains a second affidavit signed by [REDACTED] also dated March 19, 1990, wherein [REDACTED] declares that the applicant lived in Miami, Florida from January 1990 to the date of the affidavit.
- A March 19, 1990 affidavit signed by [REDACTED] who declares that he has known the applicant since November 1981, that he has been a resident of Florida since

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<sup>1</sup> The signature on the Form I-687 matches the applicant's signature on other documents, including affidavits signed before a notary.

November 1981, and who identifies the applicant's current address as in Miami, Florida. The affiant does not provide the applicant's residence for the 1981 to 1988 time period and does not indicate how he met the applicant. The record contains a second affidavit signed by [REDACTED], also dated March 19, 1990, wherein [REDACTED] declares that the applicant lived in Miami, Florida from November 1981 to the date of the affidavit. The record contains a third affidavit dated May 16, 1990 identifying the affiant as [REDACTED], who indicates that he is residing in Jersey City, New Jersey and declares that he knew the applicant from Poland and that when the applicant arrived in the United States in 1981, the applicant contacted him and that the applicant has continuously resided in the United States since his arrival. The affiant's signature does not resemble the previous two affidavits in the file but rather corresponds to the applicant's signature.

- A May 29, 1990 affidavit signed by [REDACTED] of [REDACTED], Lakewood, New Jersey who certifies that the applicant was a tenant from December 1981 to December 1985. The affiant does not identify the applicant's address and does not specify the location of the applicant's tenancy.
- A May 29, 1990 affidavit signed by [REDACTED] of [REDACTED], Jersey City, New Jersey who certifies that the applicant was a tenant "for this building" from December 1985 to the present time. The affidavit does not include the location of this building or otherwise identify the address of the applicant's tenancy.
- A May 29, 1990 affidavit signed by [REDACTED] and [REDACTED] who declare that they have known the applicant since December 25, 1981 when they met him at a Christmas party in Lakewood.

Regarding the applicant's employment in the United States, for the pertinent time periods, the Form G-325 appended to the Form I-485 indicates that the applicant was employed as a casual worker and asbestos handler from December 1981 to January 1986, no employer is listed for this time period; and as an asbestos handler for Sofia Construction in Newark, New Jersey from January 1986 to January 1989. The June 2, 1990 Form I-687 lists the applicant's employers as: M&J Construction in New York from December 30, 1981 to October 30, 1985 and Sofi Construction in Newark, New Jersey from January 1986 to the date the application was filed. The March 20, 1990 Form I-687 lists the applicant's employers as: self-employed in New Jersey performing odd jobs from September 1981 to 1986; APED as a laborer in New Jersey from February 1986 to July 1986; LVT in New Jersey as a laborer from August 1987 to February 1988; and Niram Inc. in New Jersey as a laborer from March 1988 to November 1989. The record also contains letters from three employers:

- A May 25, 1990 letter signed by [REDACTED] on the letterhead of MJ Construction who indicates that the applicant worked as a painter from December 30, 1981 to October 30,

- A May 25, 1990 letter signed by [REDACTED] on the letterhead of Sofia Construction, Inc. who indicates that the applicant worked as a painter from January 1986 to the date of the letter.
- A May 15, 2006 letter signed by [REDACTED], president of L&C Europa Co. Inc. on the L&C Europa letterhead who indicates that he has known the applicant since 1981 when the applicant began to work for his company as a painter and carpenter and who later acquired the training, skills, and licenses of an asbestos handler.

The record also includes the applicant's social security earning record statement showing the applicant has received social security wages since 1986.

The director denied the application because of the number of inconsistencies in the record regarding the applicant's residences. On appeal, counsel for the applicant asserts that the affidavits submitted and the documentation provided in support of the applicant's May 29, 1990 Form I-687 establish the applicant's eligibility. Counsel indicates that the applicant has visited Poland twice on advanced parole: January 15, to February 13, 1984 and again in July 17 to August 9, 2000. The AAO observes, preliminarily, the applicant does not claim nor does the record show that the applicant received advanced parole in January of 1984, but rather January of 1994.

The AAO has reviewed the record and concurs with the director's determination regarding the number of inconsistencies in the record regarding the applicant's residences. The applicant has submitted two Forms I-687 and a G-325 that do not correspond to each other or to the affidavits submitted on the applicant's behalf. 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). In addition, the affidavits submitted do not provide detailed and substantive information of the events and circumstances surrounding the initial relationship and subsequent interaction between the affiants and the applicant. Intermittent contact and general statements are insufficient when attempting to document an applicant's residence. The AAO has reviewed the limited information in the affidavits and notes the lack of detail regarding the applicant's entrance into the United States, the inconsistent information regarding the applicant's residences, and the lack of detailed information regarding the interaction between the affiants and the applicant. The AAO does not find these affidavits probative as these affidavits do not contain sufficient corroborating detail of the ongoing relationship and interaction of the affiants and the applicant and when reviewed with the totality of the record present unresolved inconsistencies.

The record also fails to provide a consistent record of the applicant's employment during the 1981 to 1986 time period. Again, the information on the Forms I-687 and the G-325, as well as the information submitted by employers presents inconsistencies. Moreover, the employment letters do not provide the applicant's address at the time of employment, do not identify the exact period of employment, do not show periods of layoff, do not contain declarations indicating whether the information was taken from company records, and do not identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable as required by the regulation at 8 C.F.R.

§ 245a.2(d)(3)(i). The information in the record does not provide substantive evidence of the applicant's employment from 1981 to 1986.

The AAO finds that the applicant first entered the United States in 1985 as a B-2 visitor, overstayed his visa and began employment in 1986. The applicant has not established his unlawful entry into the United States prior to January 1, 1982 and continuous unlawful presence in the United States throughout the requisite time period. The applicant has submitted deficient affidavits and letters and no contemporaneous, credible evidence of his residence in the United States prior to January 1, 1982 to 1985. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and the submission of inconsistent evidence seriously detracts from the credibility of his 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 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 prior to January 1, 1982, to 1985.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence to May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, he 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.