

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



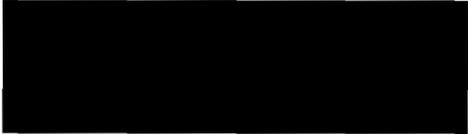
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, D.C. 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



L2

FILE: [redacted] MSC 02 240 61351

Office: NEW YORK Date:

JUN 17 2008

IN RE: Applicant: [redacted]

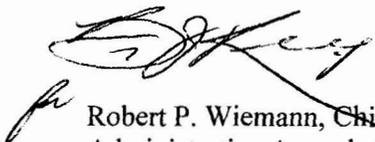
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. 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 argues that the director failed to consider and give proper weight to the affidavit provided by [REDACTED], and that the telephone conversation between the Service officer and [REDACTED] was abrupt and confusing.

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. Section 1104(c)(2)(B)(i) of the LIFE Act; 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).

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 only provided: 1) a letter dated April 20, 2002, from [REDACTED] of Tri-Boro Bagel Co., Inc., in Fresh Meadows, New York, who indicated that the applicant would help, primarily on the weekends, with cleaning and other small tasks during the period of 1981 to 1985; 2) a notarized affidavit from an acquaintance, [REDACTED], of Forest Hills, New York, who attested to the applicant's residence in the United States since 1986; 3) a notarized affidavit from [REDACTED] of Chicago, Illinois, who attested to the applicant's residence in the United States since 1985, and to the applicant's absence from the United States during October 1987 to November 1987 to Pakistan; and 4) a notarized affidavit from an acquaintance, [REDACTED], of Corona, New York, who attested to the applicant's residence in the United States since 1987.

At the time of his LIFE interview, the applicant indicated that he entered the United States with a non-immigrant visa in March 1981; resided in Corona, New York from 1981 to 1985 at [REDACTED], and from 1985 to 1990 at [REDACTED], departed the United States in October 1987 and returned in November 1987.

On July 14, 2006, the director issued a Notice of Intent to Deny, which advised the applicant of his failure to provide evidence of his March 1981 entry with a non-immigrant visa, and evidence of his departure or re-entry in 1987. The applicant was also advised that the affidavits from the affiants were insufficient in establishing continuous residence in the United States during the requisite period.

In response, the applicant's former counsel submitted copies of the affiants' affidavits along with their United States passports and certificates of citizenship. Counsel indicated that the applicant had also submitted a copy of his first passport, "which he had lost it, with stamps and notations indicating that he was first issued a passport in Karachi, Pakistan on May 16, 1980, approximately 8 months prior to the applicant's initial entry into the United States in March 1981, which corroborated the applicant's testimony." Counsel argued that the director failed to consider the totality of the applicant's testimony and all the evidence submitted.

On August 23, 2006, the director issued an amended Notice of Intent to Deny, which advised the applicant that his passport neither revealed he had obtained a non-immigrant visa prior to January 1, 1982, nor established he resided in the United States during the requisite period. The applicant was also advised that Khan Jilani was contacted on August 22, 2006, and he claimed to have known the applicant "for approximately 10 to 15 years; sometime in the 1990's and not 1987."

Counsel, in response, submitted an additional affidavit from [REDACTED], who indicated that at the time he received the telephone call on August 22, 2006, the Service officer asked if he was a United States citizen and how long had he known the applicant. The affiant indicated that he was a citizen of the United States and he had known the applicant "for a very long time, 10, 15, 20 years or maybe longer." The affiant asserted that he did not inform the Service officer that he first knew the applicant sometime in the 1990's. The affiant reaffirmed his previous statement to have known the applicant since 1987 and to the applicant's continuous residence in the United States since 1987.

The director, in his notice, questioned the authenticity of the affidavit provided by [REDACTED] as Citizenship and Immigration Services (CIS) records revealed that [REDACTED] entered the United States on February 14, 1991.

In response, current counsel asserted that as [REDACTED] obtained his permanent resident status under the seasonal agricultural worker program, pursuant to section 210 of the Immigration and Nationality Act (the Act), he would have been in the United States and employed on a farm during the statutory period prior to

May 4, 1988. Counsel stated that the February 14, 1991 entry date “could have been his [REDACTED] date of adjustment approval or another date of legal entry subsequent to his initial illegal entry.”

Counsel, however, has not provided any evidence to support his assertion. The unsupported assertion of counsel does not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). CIS records revealed that the affiant first entered the United States with an employment based visa on February 14, 1991. Furthermore, there is no record of [REDACTED] filing a Form I-700 application under section 210 of the Act. Accordingly, [REDACTED]’s affidavit has no probative value or evidentiary weight.

The director also questioned the authenticity of the employment letter from [REDACTED] and the applicant’s claimed employment at Tal Bagels at 53rd Street, New York, New York from 1985 to 1990. In an attempt to establish the veracity of each employment, CIS spoke with a representative of the New York Telephone Operator and Directory and it was revealed that “Tri Bro Bagels letterhead and address does not relate to Fresh Meadows, NY and [REDACTED] is not known at Tri-Bro Bagels” and “Tal Bagels letterhead and address does not relate to Fresh Meadows, NY and Mr. [REDACTED] is not known at Tal Bagels.”

Counsel, in response, asserted, in pertinent part:

In fact, a search for the company listing on the Yellowpages.com under business directory in New York shows that Tri Boro Bagel Company Incorporated is listed under the address of 18312 Horace Harding Expy, Fresh Meadows, NY 11355, exactly the same as the letterhead address. The only change for the company, since the employment letter was written on April 20, 2002, is the current telephone number. Moreover, the applicant’s employment with Tri-Boro Bagel Co., Inc., started more than 25 years ago for a period of less than 5 years; it is entirely possible that his prior employment history with the company is not known to the current owner or other employees whom the District Director supposedly spoke to.

Although the applicant was advised of adverse information regarding the telephone calls made on August 18, 2006, the *actual adverse evidence*, which served in part for denial in this case, namely CIS contact with the individual who indicated that the Trio Bro Bagels and Tal Bagels address did not relate to Fresh Meadows, New York and that the applicant was not known at either business was not entered into the applicant's file. Whatever resulted from such contact whether it consisted of a sworn statement, a letter, or even a specific memorandum made at the time of a telephone call to relating in detail the salient points of the conversation, *must* be incorporated into the record of proceeding. As such, the adverse evidence is insufficient to support the director's finding in this case.

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 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. The AAO, however, does

not view the affidavits submitted as substantive enough to support a finding that the applicant entered and began residing in the United States before January 1, 1982.

The applicant claims to have resided in the United States since March 1981. Nevertheless, he has only been able to provide CIS with *one* letter in support of his claimed residence prior to January 1, 1982. Furthermore, the letter lacks evidentiary weight as [REDACTED] failed to provide the address where the applicant was residing as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulation, the affiant also failed to 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 affidavits from [REDACTED] and [REDACTED] attested to the applicant's residence in the United States since 1985 and 1987, respectively, but provided no place of residence for the applicant or any details regarding the nature or origin of their relationships with the applicant or the basis for their continuing awareness of the applicant's residence. In addition, [REDACTED]'s affidavit attesting to the applicant's residence since 1986 has been discredited.

The applicant claimed to have resided in Corona, New York during the requisite period. However, no evidence such as a lease agreement, rent receipts, utility bills or affidavits from affiants was submitted to corroborate this residence. Likewise, the applicant claimed to have been employed at "Tal Bagles" during the requisite period, but provided no credible evidence to support this employment.

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).

The regulation at 8 C.F.R. § 245a.12(e) provides that "[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods." Preponderance of the evidence is defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5th ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991). 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.