

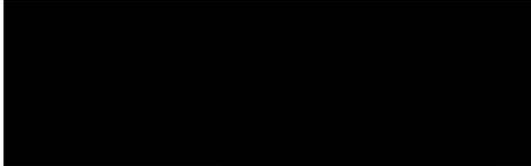


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FILE: [REDACTED]  
MSC 02 236 64520

Office: NEW YORK

Date: JUN 24 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 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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The District Director, New York, New York, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application, finding that the applicant failed to submit credible evidence that would constitute a preponderance of the evidence as to his residence in the United States during the period required under the LIFE Act. The director also found that the affidavits submitted by the applicant were not corroborated by other evidence in the record and were not credible. As such, the applicant failed to meet his burden of proof that he qualified for adjustment of status under the LIFE Act.

On appeal, counsel for the applicant requests that the director's adverse decision be reconsidered for humanitarian reasons.

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 or 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 record reflects that on May 24, 2002, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On March 25, 2004, the applicant appeared for an interview based on his application.

On April 12, 2006, the director sent the applicant a Notice of Intent to Deny (NOID) the application, finding that the applicant failed to submit credible evidence that would constitute a preponderance of the evidence as to his residence in the United States during the period required under the LIFE Act. The director also found that the affidavits submitted by the applicant were not corroborated by other evidence in the record and were not credible. The director noted that much of the evidence provided by the applicant contradicted other evidence in the record regarding presence during the required period. Finally, the director noted that the applicant was 10 years old at the time of his claimed entry and that he had not submitted evidence of having attended school in New York. As such, the applicant failed to meet his burden of proof that he qualified for adjustment of status under the LIFE Act. The director informed the applicant that he had 30 days from the receipt of the NOID to submit any information the applicant felt was relevant to his case.

In response, the applicant did not submit additional documentation. Counsel attested that the applicant had complied with the LIFE Act regulations and that there were no more documents he could produce. He asked that the director honor the validity of the documents in the record.

On June 17, 2006, the director denied the application, finding that the applicant failed to overcome the grounds for denial as stated in the NOID.

On appeal, counsel for the applicant requests that the director’s adverse decision be reconsidered on humanitarian grounds.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish his entry into the United States before January 1, 1982; his continuous residence from January 1, 1982, through May 4, 1988; and, his continuous physical presence in the United States during the requisite period.

The record of proceeding contains the following evidence relating to the requisite period:

Letters and Affidavits

- An “Affidavit of Residence” form, dated December 2, 1991, from [REDACTED]. The form lists the applicant’s address in New York, consistent with the applicant’s information on his Form I-687 Application for Status as a Temporary Resident. The form states that the applicant lived with the affiant at the listed address from November 1981 to October 1988. The form language states that the rent receipts and household bills were in the affiant’s name and that the applicant contributed toward payment of the rent and household bills. This affidavit, prepared on a fill-in-the-blank form, contains no details regarding any relationship with the applicant during the requisite period and fails to state when or where the affiant and the applicant met. [REDACTED] fails to indicate any personal knowledge of the applicant’s claimed entry to the United States during that year or of the circumstances of his residence other than his address. In addition, there is no evidence that the affiant resided in the United States during the requisite period;
- Two duplicate “Affidavit of Witness” forms, dated December 2, 1991. The forms, signed by [REDACTED] and [REDACTED], list the applicant’s address in New York from November 1981 through December 1991, and are consistent with information on his Form I-687. The form language states that the affiant has personal knowledge that the applicant has resided in the United States at the address listed. The form allows the affiant to fill in a statement that he or she “is able to determine the date of the beginning of his or her acquaintance with the applicant in the United States from the following fact(s): \_\_\_\_.” [REDACTED] added “We are good friends, we know each other from our country”; [REDACTED] added [REDACTED] is a very great person. We appreciate him.” These affidavits, prepared on a fill-in-the-blank form, contain no details regarding any relationship with the applicant during the requisite period and fail to state when or where the affiants and the applicant met. [REDACTED] and [REDACTED] fail to indicate any personal knowledge of the applicant’s claimed entry to the United States during that year or of the circumstances of his residence other than his address. In addition, there is no evidence that the affiants resided in the United States during the requisite period;
- An “Affirmation of Third Party in Regards to Absence from the United States” form, undated and signed by [REDACTED]. The form lists the affiant’s current [REDACTED]

address and states that the applicant was absent from the United States July 20, 1987, to August 25. The form allows the affiant to fill in a statement attesting "that the above mention was absent for the period stated above because \_\_\_\_\_" [REDACTED] added "I was the person who personally accompanied him to the airport the day of his departure to Ecuador in 1987." [REDACTED] provides no details regarding any relationship with the applicant during the requisite period and fails to state when and where the affiant and the applicant met. [REDACTED] fails to provide any meaningful details about the applicant's date of departure in 1987 and only states that he accompanied him to the airport on the day of his departure in 1987 not that he had any personal knowledge of the applicant's residence in the United States prior to that date or of the applicant's return to the United States later that year.

For the reasons noted above, these affidavits can be given little evidentiary weight and are of little probative value as evidence of the applicant's residence and presence in the United States for the requisite period. Although the applicant has submitted numerous affidavits in support of his application, he has not provided any contemporaneous evidence of residence in the United States during the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period. The duplicative language and use of forms also detract from the probative value of the affidavits. In addition, the Form G-352A, Biographic Information, dated September 1997, indicates that the applicant lived in Ecuador until 1988.

The record of proceedings contains various other documents, including the birth certificates of the applicant's three U.S. citizen children, indicating that they were born in New York on September 22, 1994, August 7, 1996, and March 21, 2003. None of this evidence addresses the applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have last entered the United States without inspection on August 25, 1987, and to have resided for the duration of the requisite period in New York. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has failed to do so.

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 through 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.