

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



L2

FILE:



MSC 02 288 62341

Office: NEW YORK Date:

JUN 24 2008

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. 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.

A handwritten signature in cursive script, appearing to read "R. Wiemann".

for 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 the Administrative Appeals Office (AAO) summarily dismissed the appeal. The matter will be reopened by the AAO on a Service motion pursuant to 8 C.F.R. § 103.5(a)(8)(b). The appeal will be dismissed.

On April 22, 2008, the AAO summarily dismissed the appeal pursuant to 8 C.F.R. § 103.3(a)(3)(iv), as the record at the time contained no evidence that the applicant had provided any additional evidence on appeal.

On motion, the AAO has determined that additional evidence was received at the National Benefits Center within the required timeframe as demonstrated by the United States Postal Service track and confirm printout provided by the applicant. The order summarily dismissing the appeal will be withdrawn and the appeal will be adjudicated on its merits.

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, the applicant argues that his constitutional rights for due process have been violated. The applicant asserts, in pertinent part, that he has “never been told to prove the authenticity of the affidavits, or to bring more information,” and that, “the decision is based on a so called paucity of evidence and inconsistencies in the record which are not defined.”

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 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 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 provided the following evidence throughout the application process:

- A letter dated September 20, 1990, from [REDACTED] of Masjid Malcolm Shabazz, public information for Masjid Malcolm Shabazz in New York, New York, who indicated the applicant has been a member since July 1981, and attended Friday Jumah prayer services as well as other prayer services at the Masjid.
- An affidavit dated August 21, 1990, and notarized September 27, 1990, from [REDACTED] who indicated that the applicant resided with him at [REDACTED], New York, New York from July 1981 to the present. The affiant indicated that the rent receipts and household bills were only in his name.
- A notarized affidavit from [REDACTED] of Tryall Ltd. in Jamaica, Queens, New York, who indicated that the applicant was employed in maintenance from January 1985 to November 1989 and that during his period of employment the applicant resided at [REDACTED] New York.
- A notarized affidavit from [REDACTED] of Cycle Messenger Service Inc, in New York City, who indicated that the applicant was employed as a messenger from September 1981 to December 1984 and that during his period of employment the applicant resided at 413 [REDACTED], New York.
- A receipt from the New York State Department of Motor Vehicles dated in May 1987.
- International money transfer receipts dated in January, March and May, 1987 and addressed to the applicant at [REDACTED] New York
- A notarized affidavit from [REDACTED] of Bronx, New York, who attested to the applicant's residences at [REDACTED], Bronx, New York from July 1981 to January 1987 and at [REDACTED] New York, New York from January 1987 to December 1989. The affiant asserted that he first met the applicant in 1981 when the applicant was inquiring about a job and has kept in touch with the applicant since 1981.
- A notarized affidavit from [REDACTED] of New York, New York, who attested to the applicant's residences at [REDACTED] Bronx, New York from July 1981 to January 1987 and at [REDACTED] New York, New York from January 1987 to December 1989. The affiant asserted that he met the applicant in 1982 at an African gathering in Harlem and has remained good friends with the applicant since that time.

The applicant submitted affidavits from [REDACTED] and [REDACTED] who attested to the applicant's residence at [REDACTED], Bronx, New York. However, the affidavits have no probative value or evidentiary weight as none of the affiants listed the date the applicant commenced residing at this address. The affidavit from [REDACTED] only attested to the applicant's moral character.

The director, in denying the application, noted that the affidavits from [REDACTED] and [REDACTED] and the receipts dated in 1987 submitted in response to the Notice of Intent to Deny were insufficient to overcome the grounds for denial. The director noted that the affiants furnished a vague and recited recollection of unverifiable events and that the affidavits bear a striking resemblance to hundreds of other affidavits provided by these two affiants.

On appeal, the applicant asserts that he entered the United States in July 1981 through Canada and resided at [REDACTED] with a cousin until the end of January 1987 and at [REDACTED] until 1989. The applicant indicates that the affidavits submitted by [REDACTED] and [REDACTED] were written by individuals who are from his native country, Ivory Coast, have resided in the United States for more than 30 years, are United States citizens, and are honest and well respected in their community. The applicant asserted, in pertinent part:

The reasons they signed hundreds of affidavits is simply due to the fact that they have been here for so long and they know thousands of members of our community. I don't think that knowing hundreds of people of your own community can never be a bad thing. Signing affidavits on their behalf is certainly not a fraud. Any suggestion to the contrary is abusive and highly subjective.

The applicant argues that none of the remaining affiants have been contacted and the director failed to consider the receipt from the Department of Motor Vehicles and the international money transfers dated during 1987. The applicant asserts that he lost his insurance card and other documents relating to the vehicle he claims he had for two years. Regarding his employment, the applicant claims that he worked "off the book" and is unable to provide pay stubs. The applicant submits copies of documents that were previously provided along with documents that have no relevance as they serve to establish the applicant's residence and presence in the United States subsequent to the period in question.

Citizenship and Immigration Services (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 the applicant have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through May 4, 1988, as he has presented contradictory and inconsistent documents, which undermines his credibility. Specifically:

1. [REDACTED], in his affidavit, indicated that the applicant resided with him since July 1981 through the date of his affidavit (August 21, 1990) at [REDACTED]

However, the applicant, on appeal, asserts that he resided at [REDACTED] from 1981 to January 1987.

2. The letter from [REDACTED] has little evidentiary weight or probative value as it does not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, the affiant does not explain the origin of the information to which he attests.
3. The affidavits from [REDACTED] and [REDACTED] 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 as required under 8 C.F.R. § 245a.2(d)(3)(i). Further, [REDACTED] indicated that the applicant resided at [REDACTED] throughout his employment. The applicant, however, indicated that he resided at this address until January 1987.
4. Assuming, arguendo, the applicant did own a vehicle for two years prior to May 1987, he could have obtained a copy of his vehicle registration from the Department of Motor Vehicles in an effort to establish his claim of residence in the United States.
5. The applicant indicated on his Form G-325A, Biographic Information, signed April 30, 2002, that he resided in his native country, Ivory Coast, from October 1947 to December 1989.
6. Most importantly, the record reflects that the applicant filed a Form I-589, Application for Asylum and for Withholding of Deportation on June 2, 1995.<sup>1</sup> The applicant indicated on said form that he started working as a volunteer at the Ivorian Human Rights League in his native country in January 1988 and he was arrested on March 7, 1988, and detained for four weeks. Upon his release the applicant indicated, "I went back to work in the company I was working before my arrest." At Part E of the application, the applicant listed his residence and employment as [REDACTED] Abidjan, Ivory Coast from January 1980 to December 1989, and at SGIC-CI, Abidjan, Ivory Coast from 1987 to December 1988, respectively.

The summary of testimony taken at the time of his September 18, 1999, interview indicates that in September 1988, the applicant was fired from his job because the administration did not like that the police started to raid the company and checking on the applicant. The applicant was unable to get a decent job due to his police record and in November 1989, his former boss provided him with documentation in order for him to obtain a United States visa. The applicant departed the Ivory Coast in December 1989.

These factors establish that the applicant utilized documents in a fraudulent manner in an attempt to support his claim of residence in the United States during the requisite period. By engaging in such an action, the applicant has irreparably harmed his own credibility as well as the credibility of his claim of continuous residence in the United States for the requisite period.

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

---

<sup>1</sup> The applicant was issued alien registration number [REDACTED]

“evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black’s Law Dictionary 1064 (5<sup>th</sup> 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.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

At the time the applicant filed his Form I-687 application, he listed his absence during the required period as June 1, 1987, to June 30, 1987, and presented a copy of an airline ticket from Air Afrique, which reflected a June 1<sup>st</sup> departure from New York. The authenticity of the airline ticket was called into question as it did not list *the year* of the departure. As such, on or about October 30, 1990, the applicant was requested to submit a letter from the airline to corroborate his claim of departure. The applicant, in response, submitted an airline ticket and a letter and signed by [REDACTED], director of Air Afrique in North America, which attested to the applicant’s departure on flight 079/01 on June 1, 1987, from J.F.K. Airport to Abidjan, Ivory Coast. In an effort to establish the authenticity of the letter and airline ticket, the interviewing officer spoke with two representative of Air Afrique and it was determined that both documents were never issued by representatives of Air Afrique.

This information further undermines the applicant’s credibility to have already been in the United States before January 1, 1982, and that he was in a continuous unlawful status up to his *alleged re-entry* on June 30, 1987.

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