

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

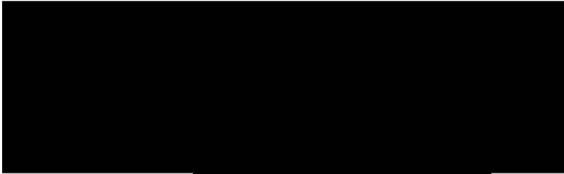
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, D.C. 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

L2



FILE: [REDACTED]  
MSC 02 010 61262

Office: NEW YORK Date: JUN 27 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. The director also denied the application because the applicant failed to submit the requested court disposition.

On appeal, the applicant asserted that he did submit a response to the Form I-72, and submits copies of the documents that were previously presented.

An applicant who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to permanent resident status. Section 245A(b)(1)(C) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1255a(b)(1)(C); 8 C.F.R. §§ 245a.11(d)(1) and 18(a)(1).

“Misdemeanor” means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term actually served, if any; or (2) a crime treated as a misdemeanor under 8 C.F.R. § 245a.1(p). For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 245a.1(o).

The first issue in this proceeding is whether the applicant is ineligible for the benefit being sought due to his criminal record.

At the time of his LIFE interview on June 15, 2004, the applicant was issued a Form I-72, which requested the applicant to submit the court disposition for his traffic violation. In a Notice of Intent to Deny dated February 15, 2006, the applicant was advised that the requested court disposition has not been received.

On appeal, the applicant, submits a court disposition, which reflects that on October 9, 1997, the applicant was arrested for violating VTL 509.1, operating a vehicle without a license, and VTL 511.1, aggravated unlicensed operation of a motor vehicle in the third degree. On November 12, 1997, the applicant pled guilty to violating VTL 509.1 and paid a fine. Docket no. § [REDACTED] 7.

This single misdemeanor conviction does not render the applicant ineligible pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a).

The second 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.

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)(1) 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).

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided the following evidence:

- A notarized affidavit from [REDACTED] of Brooklyn, New York, who attested to the applicant's residence in the United States since 1981. The affiant based his knowledge on having the applicant as a customer at his barber shop since 1983.
- A notarized affidavit from [REDACTED] of Monsey, New York, who indicated that he has personally known the applicant since 1986, and attested to the applicant's current residence.
- A notarized affidavit from [REDACTED] of Jersey City, New Jersey, who attested to the applicant's residence in the United States since 1981. The affiant based his knowledge on having met the applicant in Brooklyn in 1984 at a friend's house.
- A notarized affidavit from [REDACTED] of Brooklyn, New York, who attested to the applicant's residence in the United States since 1981. The affiant based his knowledge on being a neighbor of the applicant since 1985. The affiant asserted that he and the applicant were sales persons and worked together.
- A notarized affidavit from [REDACTED] of Brooklyn, New York, who indicated that he has known the applicant since 1985. The affiant asserted he was a neighbor of the applicant at [REDACTED] Brooklyn, New York.
- Notarized affidavits from [REDACTED] of Brooklyn, New York, and [REDACTED] of Jamaica, New York, who indicated that they have known the applicant since 1981. The affiants asserted that the applicant used to work with them as a street vendor. Mr. [REDACTED] asserted that he was a neighbor of the applicant.

- A notarized affidavit from [REDACTED] of Brooklyn, New York, who attested to have known the applicant since 1984, and has remained good friends with the applicant since that time.
- A two-year lease agreement entered into on August 23, 1987, for residence at [REDACTED] Brooklyn, New York.
- A notarized affidavit from [REDACTED] of Brooklyn, New York, who indicated that he first met the applicant at a Subway store in Brooklyn in 1985. The affiant asserted that he has remained friends with the applicant since that time.
- A photocopied envelope postmarked March 2, 1987, and addressed to the applicant at [REDACTED], Brooklyn, New York.
- A letter dated March 13, 1984, from [REDACTED], a medical doctor, at Maimonides Medical Center in Brooklyn, New York, who indicated the applicant was treated for chest pain, prescribed medication, and a follow-up appointment within a week.
- A letter dated June 27, 2001, from [REDACTED] director of Dar Ehya Essunnah, Inc., in Brooklyn, New York, who indicated that he has known the applicant since 1981, and the applicant has attended regular prayers and Friday congregation since 1986.
- An undated and unsigned letter from a representative of Richmond County Savings Bank, in Staten Island, New York, who indicated that a savings account was opened in the applicant's name on December 15, 1981.
- A document dated June 15, 1982, from Royal Contracting Co. in Brooklyn, New York.

In a Notice of Intent to Deny dated February 15, 2006, the applicant was advised that the affidavits submitted did not credibly establish that he had entered the United States prior to January 1, 1982. The notice, however, was returned by the post office as undeliverable. On March 22, 2006, the director denied the application.

As the director's decision did not set forth the specific reasons for the denial of the application as required in 8 C.F.R. § 103.3(a)(1)(i), the AAO, on May 5, 2008, sent a copy of the Notice of Intent to Deny to the applicant's current address. The applicant was given 30 days in which to provide a response to the notice. The applicant, in response, submitted an affidavit outlining each document he had submitted, throughout the application process, in an attempt to establish his continuous residence during the requisite period.

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 of the applicant regarding the amount and sufficiency of the applicant's evidence of residence and the his inability to produce additional evidence of residence for the period in question due to the passage of time have been considered. The AAO, however, does not view the affidavits discussed above as substantive enough to support a finding that the applicant entered and began residing in the United States before January 1, 1982 through May 4, 1988. Specifically:

1. [REDACTED] and [REDACTED] cannot attest to the applicant's residence prior to January 1, 1982, and they claim to have met the applicant in 1983, 1984, and 1985, respectively.
2. The letter from Richmond County Savings Bank has no probative value or evidentiary weight as it was not signed by a representative of the bank.
3. The applicant asserts that the document from Royal Contracting Co. is a "payment voucher for my job during June 1982." However, the applicant did not claim employment with this company on his Form I-687 application. Assuming, arguendo, the applicant was employed by this company in 1982, it is reasonable to expect an employment verification letter from said company. However, no such document was submitted by the applicant.
4. [REDACTED] and [REDACTED] indicated that they have known the applicant since 1981, but failed to state the applicant's place of residence during the requisite period and the basis for his continuing awareness of the applicant's residence.
5. [REDACTED] indicated that the applicant was known to him since 1981, but failed to state the applicant's place of residence and the basis for his continuing awareness of the applicant's residence prior to 1986. Furthermore, the applicant did not list any affiliation with a religious organization during the requisite period at item 34 on his Form I-687 application.
6. The remaining affidavits have little probative value as the affiants all attest to have met the applicant subsequent to 1981.

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 (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.

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