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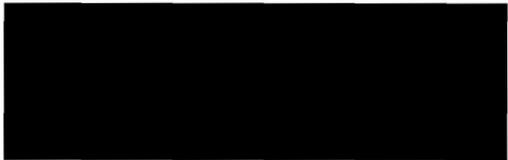
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, D.C. 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CHICAGO Date: **MAR 21 2008**
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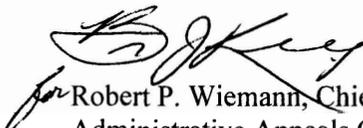
IN RE: Applicant: [REDACTED]

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:
[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


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, Chicago, Illinois, 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 asserts that the applicant has provided, by a preponderance, proof that he has resided in the United States during the requisite periods.

An applicant for permanent resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. 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).

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).

On December 2, 2002, the director issued a Form I-72, which requested the applicant to submit the final court dispositions for his arrest on November 2, 1984, by the Berwyn Police Department for assault, and on July 1, 1985, by the Lyons Police Department for unlawful use of weapon, both misdemeanors. The applicant, in response, submitted court dispositions indicating that on January 9, 1985, (Case no. [REDACTED]) and on August 20, 1985, (Case no. [REDACTED]) the applicant was convicted of both offenses, respectively.

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

- A statement dated March 17, 1992, from [REDACTED] of Chicago, Illinois, who indicated he has known the applicant for approximately eight years at the applicant's place of employment, [REDACTED] located at [REDACTED] and attested to the applicant's character.
- A statement dated March 16, 1992, from police officer, [REDACTED] of Chicago, Illinois, who indicated that he met the applicant in 1980 at the applicant's place of employment, [REDACTED] and attested to the applicant's character.
- A letter dated March 31, 1992, from [REDACTED] owner of [REDACTED] at [REDACTED] [REDACTED] in Chicago, who indicated that he has known the applicant since 1980 and that the applicant was in his employ for 11 years.
- An affidavit notarized September 4, 1992, from [REDACTED] who attested to the applicant's employment as a grill man for the past 11 years at his two restaurants, [REDACTED] and [REDACTED]
- An affidavit notarized April 17, 1992, from [REDACTED] of Stickney, Illinois, who indicated that he is the owner of residential property at 4 [REDACTED], and attested to the applicant's residence in apartment 8 from October 1, 1984, to September 1987.
- A letter dated March 23, 1992, from a brother, [REDACTED] of Prospect Heights, Illinois, who attested to the applicant's residence since 1980 in the United States. The affiant asserted that the applicant resided in his [REDACTED] home, [REDACTED] for three months and moved to [REDACTED] where he resided for three years.
- An affidavit notarized April 17, 1992, from [REDACTED] who indicated she is the owner of residential property at [REDACTED], Berwyn, Illinois and attested to the applicant's residence in the basement apartment from "February through September 1983."
A letter dated March 23, 1992, from [REDACTED] of Forest Park, Illinois, property manager of [REDACTED] who indicated the applicant was a tenant in unit #5 from February 2, 1981 to February 2, 1984.
A certificate of marriage certificate issued by Cook County (Illinois) on January 28, 1984.
- A letter dated March 15, 1992, from police officer, [REDACTED] of Chicago, Illinois, who indicated he has known the applicant for over 11 years, and attested to the applicant's employment at [REDACTED] at [REDACTED] and at [REDACTED] s on [REDACTED]
- Notarized affidavits from [REDACTED], and [REDACTED] who indicated they have known the applicant since 1980.
- Notarized affidavits from [REDACTED] and [REDACTED], who indicated they have known the applicant since 1981 and 1982, respectively.

- An affidavit notarized December 30, 2003, from counsel who indicated that he has known the applicant for over 22 years and had represented the applicant in professional capacity in 1992.
- A social security statement dated October 17, 2002, which listed the applicant's earnings for 1985 and from 1987 to 1996.

On July 8, 2005, the director issued a Notice of Intent to Deny, which advised the applicant that the affidavits and other documentation had been taken into consideration; however, it was determined that the applicant had not established by a preponderance of evidence that he met the requirements to adjust his status under the LIFE Act.

The applicant, in response, submitted:

- A notarized affidavit from [REDACTED] of Roselle, Illinois, who indicated that he met the applicant in 1980 during the Thanksgiving holiday. The affiant asserted that he has remained good friends with the applicant since that time.
- An additional affidavit from [REDACTED], who indicated that the applicant was in his employ at [REDACTED] from 1983 to 2003. The affiant also attested to the applicant's employment at another location at [REDACTED] from 1987 to 1995. The affiant asserted that the applicant received his wages in cash and by check.
- An additional affidavit from [REDACTED] who indicated that in April 1981, he was a co-worker of the applicant at [REDACTED] located at [REDACTED] Berwyn, Illinois. The affiant asserted that the applicant worked at [REDACTED] for two years and attested to the applicant's residence at [REDACTED] during this employment period.
- A notarized affidavit from [REDACTED] of Palos Hills, Illinois, who indicated he was a co-worker of the applicant in 1981 at [REDACTED]s for two years and at [REDACTED] from 1983 to 1995.
- A copy of his passport, which reflects that the passport was renewed at the Chicago Consulate on November 16, 1982.
- Several photographs the applicant claimed were taken in 1980 through 1988.

The statements of counsel on appeal regarding the amount and sufficiency of the applicant's evidence of residence, and the applicant's inability to produce additional evidence of residence for the period in question due to the passage of time have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant continuously resided in the United States since before January 1, 1982 through 1982 as he has presented contradictory and/or inconsistent documents, which undermines his credibility. Specifically:

1. In his initial affidavits [REDACTED]s indicated that the applicant was in his employ for 11 years. As the affidavits were notarized in 1992, said employment would have commenced in 1981. However, in his subsequent affidavit, the affiant amended his statement to indicate the applicant's employment commenced in 1983. As conflicting statements have been provided, it is reasonable to expect an explanation from the affiant in order to resolve the contradictions. However, no statement from [REDACTED]s has been submitted to resolve his contradicting affidavits. As such, the affiant's affidavits have no probative value or evidentiary weight in establishing the applicant's continuous residence prior to 1983.
2. [REDACTED] and [REDACTED]s indicated that the applicant was employed at [REDACTED] for two years commencing in April 1981. The applicant, however, did not claim this employment

on his Form I-687 application. Item 36 of the Form I-687 requests that the applicant list “[e]mployment in the United States since first entry.” As such, the affiants’ affidavits have no probative value or evidentiary weight in establishing the applicant’s continuous residence prior to 1983.

3. The photographs have no identifying evidence that could be extracted which would serve to either prove or imply that photograph was taken in the United States and during the requisite period.
4. [REDACTED] attested to the applicant’s residence in the United States since 1980, but provided no address for the applicant during the period in question.
5. [REDACTED]s and [REDACTED]s affidavits raises questions to their authenticity as Mr. [REDACTED] in his subsequent affidavit, indicated the applicant’s employment at his restaurants commenced in 1983.
6. The affidavit from the applicant’s brother must be viewed as having a self-evident interest in the outcome of proceedings, rather than as an independent, objective and disinterested third party.
7. [REDACTED] indicated that the applicant resided at [REDACTED] Berwyn, Illinois from February to September 1983. However, [REDACTED], in her affidavit, indicated that the applicant was residing at [REDACTED] during this time period. No statements have been submitted from the affiants to resolve these contradicting affidavits.
8. [REDACTED] and [REDACTED] all claimed to have known the applicant prior to 1983, but provided no address for the applicant during the period in question, no details regarding the nature or origin of their relationships with the applicant, or the basis for their continuing awareness of the applicant’s residence.
9. In a separate proceedings (Form I-130), the applicant filed a Form G-325, Biographic Information, and indicated his employment at [REDACTED] commenced in March 1985.

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).

Given the credibility issues arising from the documentation provided by the applicant, absence of a plausible explanation, 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.