



U.S. Citizenship
and Immigration
Services

PUBLIC COPY
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



L2

FILE:



MSC 02 225 64338

Office: NEW YORK

Date: **MAY 12 2008**

IN RE: Applicant:



APPLICATION:

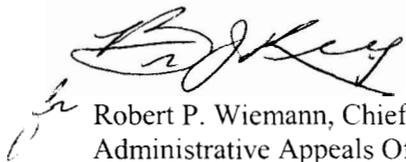
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



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 (director) in New York City. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that he resided continuously 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 sufficient evidence to establish his eligibility for LIFE legalization.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. See section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

“Continuous unlawful residence” is defined at 8 C.F.R. § 245a.15(c)(1), as follows: “An alien shall be regarded as having resided continuously in the United States if *no single absence* from the United States has *exceeded forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed.” (Emphases added.)

“Continuous physical presence” is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: “An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of *brief, casual, and innocent absences* from the United States.” (Emphasis added.) The regulation further explains that “[b]rief, casual, and innocent absence(s) as used in this paragraph means *temporary, occasional trips abroad* as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.” (Emphasis added.) 8 C.F.R. § 245a.16(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 its amenability to verification. See 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 applicant – a native of Colombia who claims to have lived in the United States since March 1981 – filed his application for legal permanent resident status under the LIFE Act (Form I-485) on May 13, 2002. At that time the record included a series of affidavits and letters attesting to the applicant’s residence and presence in the United States during the 1980s, all of which had been submitted in connection with the applicant’s claim for class membership in the *CSS v. Meese* class action lawsuit¹ in 1991. They included, in addition to the applicant’s own affidavits, the following:

- Four affidavits dated April 26, 1991, with identical fill-in-the-blank formats – two from residents of Babylon, New York ([REDACTED] and [REDACTED]), one from a resident of Patchogue, New York ([REDACTED]), and one from a resident of Brooklyn ([REDACTED]) – who state that the applicant had resided at (1) [REDACTED] in Copiague, New York, from March 1981 to March 1984, (2) [REDACTED] in Copiague from April 1984 to October 1989, and (3) at [REDACTED] in Babylon, New York, since November 1989.

¹ *Catholic Social Services, Inc. v. Meese*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993).

- An affidavit from [REDACTED] (one of the four affiants above), dated March 14, 1991, stating that the applicant had been sharing his apartment at [REDACTED] in Babylon, New York, since November 1989.
- Two more affidavits dated April 26, 1991, with identical fill-in-the-blank formats, from [REDACTED] and [REDACTED] of [REDACTED] in Copiague, New York, who state that the applicant left the United States on July 5, 1987 to visit his ill mother in Colombia, and returned to the United States on August 3, 1987.
- A statement from [REDACTED] on the letterhead of Restaurant El Paraiso in Brooklyn, New York, dated February 6, 1991 and notarized on April 5, 1991, stating that the applicant had worked for the restaurant as a “general helper” from April 1981 to March 1984.

A letter from [REDACTED], Production Manager of Thermo-Air Industries Corp. in Deer Park, New York, dated November 24, 1989, stating that the applicant had been employed by the company since May 7, 1986, and was earning \$7.75/hour as of 1989.

On October 14, 2005, the director issued a Notice of Intent to Deny (NOID), advising the applicant that the foregoing documentation, together with his own affidavits and the testimony he offered at his interview for LIFE legalization on March 16, 2004, failed to establish his continuous residence in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. In the director’s view, there were inconsistencies and contradictions in the evidence that cast doubt on the credibility of all the documentation submitted by the applicant. The applicant was granted 30 days to submit additional evidence.

The applicant responded to the NOID with an affidavit offering explanations for the various inconsistencies and contradictions cited by the director. The applicant also submitted four rental checks – two made out to [REDACTED] and [REDACTED] (his landlords on [REDACTED] in Copiague from April 1984 to October 1989), dated November 5, 1988 and October 16, 1989, respectively, and two made out to [REDACTED] dated October 28, 1989 and September 29, 1993, respectively.

On September 1, 2006, the director issued a Notice of Decision denying the application. The director found that the applicant’s response to the NOID was insufficient to overcome the grounds for denial. The director noted that the four checks were all dated outside the statutory period for required continuous residence in the United States (before January 1, 1982 through May 4, 1988) and therefore had no bearing on the case. The director also determined that the applicant’s affidavit had “fail[ed] to explain away the discrepancies in the evidence.”

On appeal, counsel asserts that the applicant's evidence and his explanations of apparent inconsistencies "are consistent and plausible in the context of a legalization case" and should be accorded deference in the adjudication of his application.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that he has not.

While some of the applicant's explanations of the evidentiary inconsistencies appear plausible to the AAO, some do not. The AAO agrees with the director that the applicant has not adequately explained the fact that his personal affidavits regarding his employment and residence in the United States since 1981 (dated in March and April 1991) – which he claimed were necessitated by the refusal of his former and current employers and landlords to issue letters of confirmation – postdated the affidavits and letters from at least one of the landlords [REDACTED] – March 14, 1991) and two of the employers [REDACTED]. – November 24, 1989, and [REDACTED] – February 6, 1991) claimed by the applicant between 1981 and 1991. The AAO also notes that the applicant's employment affidavit, sworn to before a notary public on March 7, 1991, inexplicably bears the date of April 19, 1991 (six weeks later) at the top of the document. In addition to these internal inconsistencies, however, the AAO determines that the affidavits and letters in the record are not substantive enough to establish that the applicant was continuously resident in the United States from before January 1, 1982 through May 4, 1988.

With respect to the two employment letters, neither comports with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because they did not provide the applicant's address at the time of employment, did not describe the applicant's duties in detail, did not declare whether the information was taken from company records, and did not indicate whether such records were available for review. In his LIFE interview the applicant claimed that he worked in the Restaurant El Paraiso as a dishwasher and cleaner, and for Thermo-Air Industries Corp. as a glass cutter for windows, but no such information was provided in the two employment letters. In view of these crucial omissions, the AAO concludes that the employment letters have little evidentiary weight.

As for the affidavits from individuals who claim to have known, and in some cases resided with, the applicant during the 1980s, a common attribute of all but one of them is that they have fill-in-the-blank formats with little or no personal input from the affiants. The one affidavit that breaks that mold – from [REDACTED] who stated that the applicant had been residing in his apartment since November 1989 – is useless in this proceeding since the time period he addresses postdates the statutory period (January 1, 1982 to May 4, 1988) for LIFE legalization. None of the affiants provides any details about the applicant's life in the United States aside from the bare essentials of where he lived during certain years in the 1980s and that he took a four-week trip to Colombia in 1987. The affiants offered little or no information about their interaction with the applicant during the 1980s, and did not supplement their affidavits with any documentary evidence – such as photographs, letters, or other documents – of their relationship

with the applicant. In other words, the factual basis upon which the affiants claim to have personal knowledge of the applicant's continuous residence in the United States during the years 1981-1988 is completely lacking in the record.

Based on the foregoing analysis, the AAO concludes that the applicant has failed to establish that he resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.15(c)(1). Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

The appeal will be dismissed, and the application denied.

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