



U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

[REDACTED]

L2

FILE: [REDACTED]  
MSC 02 107 60442

Office: NEW YORK

Date: **MAY 21 2008**

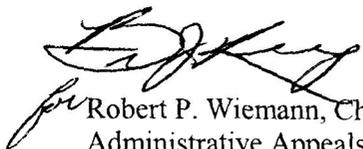
IN RE: Applicant: [REDACTED]

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:  
[REDACTED]

**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.

  
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 is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

On appeal, counsel for the applicant submits a brief and states that the director erred by applying the wrong legal standard and failed to afford proper weight to the evidence presented. Counsel does not submit additional evidence on appeal.

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 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.

In the Notice of Intent to Deny (NOID), dated March 28, 2004, the director stated that the applicant failed to submit sufficient evidence demonstrating his continuous unlawful residence in the United States during the requisite period. The director indicated that the applicant's testimony and the evidence submitted lacked credibility and probative value. The director granted the applicant thirty (30) days to submit additional evidence.

The record reflects that counsel's response to the NOID consisted of a brief and additional evidence. In the Notice of Decision, dated February 10, 2005, the director denied the instant application based on the reasons stated in the NOID.

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. The record reflects that the applicant submitted photocopies of letters of employment, affidavits, and mail envelopes as evidence to support his Form I-485 application. Here, the submitted evidence is not relevant, probative, and credible.

#### Employment Letters

The applicant submitted two letters of employment. The first is a letter from [REDACTED] Manager of Masem Trading Co., dated August 2, 1989. Mr. [REDACTED] states that the applicant was employed from May 1981 until June 1986. The second is a letter from [REDACTED] Manager, First Class Auto Cleaning & Carrier Service, dated May 8, 1990. Mr. [REDACTED] states that the applicant was employed from July 1986 as a Cashier.

Pursuant to 8 C.F.R. § 245a.2(d)(3)(i), letters from employers should be on employer letterhead stationery. None of the letters of employment are on original company letterhead stationery. In addition, the affiants failed to provide the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the affiants also 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.

Affidavits

The applicant submitted a sworn form affidavit from [REDACTED], dated August 2, 1989, attesting to having known the applicant since Winter 1981. Mr. [REDACTED] states that he meets the applicant at monthly Ewe meetings. In a second form affidavit from [REDACTED], dated April 25, 1990, he states that he shared an apartment with the applicant at [REDACTED] New York, NY 10027 from Winter 1981 to Summer 1983. However, [REDACTED] does not state in either of the affidavits whether the applicant has been a continuous resident of the United States since that time.

The applicant also submitted three sworn form affidavits from [REDACTED] two are dated August 2, 1989, and the third affidavit is dated July 25, 1990. In one of the affidavits dated on August 2, 1989, [REDACTED] attests that he has shared an apartment with the applicant at [REDACTED] New York, N.Y. 10027 since August 1983. In his second and third affidavits, Mr. [REDACTED] states, however, that he and the applicant have been living together since 1981. The affiant does not state in his first affidavit whether he has known the applicant to reside in the United States since prior to January 1, 1982, or whether the applicant has been a continuous resident of the United States since that time. In addition, the affidavits from [REDACTED] are inconsistent. In the first affidavit the affiant states only that he and the applicant shared an apartment since August 1983, however, in the second and third affidavits, the affiant states that he and the applicant shared an apartment since 1981. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record.

The applicant also submitted a sworn affidavit from [REDACTED], dated January 3, 2002, attesting to knowing the applicant since 1981. Ms. [REDACTED] states that she has been in regular contact with the applicant through phone calls and friendly visits. However, the affiant does not state how she dated her acquaintance with the applicant, and she does not state whether the applicant has been a continuous resident of the United States since that time.

The applicant also submitted a sworn affidavit from [REDACTED] dated August 28, 2001, attesting to knowing the applicant since March 1981. Mr. [REDACTED] states that he and the applicant visit each other on different occasions and are always in contact with each other. However, the affiant does not state whether the applicant has been a continuous resident of the United States since that time.

The applicant also submitted copies of 7 mail envelopes addressed to him in the United States. The applicant has not submitted original envelopes, and except for two of the envelopes (with postmark

dates stamped in 1986 and in 1988) the postmark dates are unclear. Therefore, these envelopes are not probative.

Contrary to counsel's assertion, although the applicant has submitted 2 employment letters and 7 affidavits, he has not submitted sufficient credible evidence to support his application. In addition, the applicant 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 affiants included any supporting documentation of the applicant's presence in the United States during the requisite period. Also, the applicant has failed to provide any reliable documentation to establish his claimed entry into the United States. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim. In that the applicant claims that he has resided in the United States since March 1981, it is reasonable to expect that the applicant would be able to provide some contemporaneous evidence in support of his application. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States during the requisite period.

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.