

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



L2

FILE: 
MSC 01 352 61273

Office: NEW YORK Date: **MAY 30 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, 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 had exceeded the forty-five (45) day limit for a single absence from the United States during the requisite period.

On appeal, the applicant submits additional evidence in support of his appeal.

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:

- A copy of his Columbian passport, which reveals that on June 28, 1985, the applicant was issued a B-2 nonimmigrant visa. The applicant lawfully entered the United States as a B-2 non-immigrant visitor on July 17, 1985.
- A notarized affidavit from [REDACTED] of Jackson Heights, New York, who indicated that the applicant resided in her apartment at [REDACTED] Jackson Heights from July 17, 1985, to December 15, 1989.
- A notarized affidavit from [REDACTED] of Jackson Heights, New York, who indicated that the applicant resided in his apartment at [REDACTED], Jackson Heights from February 12, 1984, to June 7, 1985.
- A notarized affidavit from [REDACTED] of Jackson Heights, New York, who indicated that the applicant resided in her apartment at [REDACTED], Jackson Heights, from May 25, 1981, to February 12, 1984.
- A notarized affidavit from [REDACTED], vice-president of Gargoyles Studios in Brooklyn, New York, who attested to the applicant's employment as a frame print supervisor and mold maker since August 9, 1985.
- A notarized affidavit from [REDACTED] of M.S. Wholesale Beef Products, Inc. in Bronx, New York, who indicated that the applicant was employed in his company as a delivery person from April 7, 1984, to June 10, 1985.
- A notarized affidavit from [REDACTED] of La Casa Del Pollo in Jackson Heights, New York, who indicated that the applicant was employed in his company as a cashier from July 15, 1981, to March 20, 1984.
- A notarized affidavit from [REDACTED] of Flushing, New York, who attested to the applicant's residence in Jackson Heights, New York from June 1982 to December 1990. The affiant asserted that he met the applicant through mutual friends.
- A notarized affidavit from [REDACTED] of Jackson Heights, New York, who attested to the applicant's residence in Jackson Heights from November 1982 to December 1990. The affiant asserted that she met the applicant at "son's birthday party and became friends over the years."
- A notarized affidavit from [REDACTED] of Jackson Heights, New York, who attested to the applicant's residence in Jackson Heights from July 1981 to December 1990. The affiant asserted that she met the applicant while she was residing with his aunt.
- A notarized affidavit from [REDACTED] of Flushing, New York, who attested to the applicant's residence in Jackson Heights, New York from March 1982 to December 1990. The affiant asserted that she met the applicant at a family party.
- A notarized affidavit from [REDACTED] of Brooklyn, New York, who attested to the applicant's residences in Jackson Heights, New York since June 1983. The affiant asserted that he has visited the applicant's residence.
- A notarized affidavit from [REDACTED] of Jackson Heights, New York, who attested to the applicant's residence in Jackson Heights from July 1987 to December 1989. The affiant asserted that he was the applicant's next-door neighbor in Jackson Heights.

- A notarized affidavit from [REDACTED] of Jackson Heights, who attested to the applicant's residence in Jackson Heights from May 1981 to December 1990. The affiant asserted that she was a next-door neighbor of the applicant's aunt.
- A letter dated November 26, 1990, from [REDACTED] of Church of St. Sebastian in Woodside, New York, who indicated that the applicant swore to him that he has resided in the United States since 1981 and had been a member of the parish since that time.
- A letter dated March 30, 2004, from [REDACTED], parochial vicar of Church of St. Sebastian in Woodside, New York, who indicated that the applicant has been a member of the parish since 1981 and regularly attends services.
- A notarized affidavit from [REDACTED] of New York, New York, who indicated that he has known the applicant since 1982 and attested to the applicant's moral character.
- Wage and tax statements for 1986, 1987 and 1988 from Together Gargoyles, Inc.
- A High School Equivalency Diploma issued on March 11, 1987.
- An envelope postmarked October 17, 1986.
- A social security statement reflecting his wages since 1985.
- Documentation from the Office of the City Clerk, Marriage License Bureau in Queens, New York dated in January 1986 and on November 24, 1986.
- A non-criminal fingerprint application from the New York Police Department dated March 6, 1986.
- A replacement passport issued by the Columbia Consulate General in New York on June 12, 1985.

On August 10, 2005, the director issued a Notice of Intent to Deny, which advised the applicant that many of the affidavits provided lacked credibility as the affiants failed to establish a relationship with the applicant, and they were not amenable to verification as the affiants' current telephone numbers were not provided. The director further advised the applicant of the following:

During your interview, you were questioned about your departures from the United States. You claimed that your first departure occurred in "February or March, 1985". The reason given was to take care of your allegedly sick parents. You also stated that you wanted to go to school in Colombia, and pursue a career there. You said that you even applied to go to school. You said that you returned on July 17, 1985.

The applicant was advised that his absence of 108 days exceeded the 45-day limit for a single absence from the United States during the requisite period. The applicant was granted 30 days in which to submit a response. The applicant, however, failed to respond to the notice and the director denied the application on March 29, 2006.

On appeal, the applicant submits copies of documents that were previously provided along with several photographs the applicant claimed were taken during the requisite period, and an affidavit from [REDACTED] of Albertson, New York, who indicates he has known the applicant since 1982. The affiant asserts that he was a co-worker of the applicant at Gargoyles Studios in Brooklyn, New York. The applicant also submits identification documents for some of the affiants that had previously provided affidavits on his behalf.

The applicant asserts, in pertinent part:

In reference to the statement I gave regarding my first departure in "February or March" 1985, I want to clarify that my departure was in June 1985 and I stayed for one month to take care of my sick mother. I also said that I wanted to go to school in Colombia because since my mother was very ill, I thought that her illness [sic] would take longer and I had to do something in my country while I was taking care of her. But as she got better sooner than I expected, then I decided to come back to the United States. Perhaps I didn't know how to explain it at the time of the interview because this event occurred more than 20 years ago.

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 evidence of record submitted does not establish with reasonable probability that the applicant was already in the United States before January 1, 1982, and that he resided in a continuous unlawful status since that date to June 1985. Specifically:

- Although the director informed the applicant that photographs could be submitted, the photographs that the applicant had submitted had no identifying evidence that could be extracted which would serve to either prove or imply that the photographs were taken in the United States and during the requisite period.
- The letters from _____ and _____ have little evidentiary weight or probative value as they do not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, neither pastor explains the origin of the information to which he attests.
- _____ and _____ attested to the applicant's employment, but neither provided the address where the applicant was residing as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulation, 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.
- The affidavits from the applicant's relatives must be viewed as having a self-evident interest in the outcome of proceedings, rather than as independent, objective and disinterested third parties.
- The affidavits from the remaining affiants have little evidentiary weight inasmuch as they do not provide any details regarding the nature or origin of their relationships with the applicant or the basis for their continuing awareness of the applicant's residence.

The evaluation of the applicant's claim is a factor on both the quality and quantity of the evidence provided. While affidavits in certain cases can effectively meet the preponderance of evidence standard, the affidavits submitted by the applicant are lacking in probative value and evidentiary weight and, therefore, 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 since that date 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).

The record reflects that on April 14, 1986, a Form I-130, Petition for Alien Relative, was filed on behalf of the applicant and he was assigned alien registration number A [REDACTED]. Accompanying the Form I-130, is a Form G-325A, Biographic Information, signed by the applicant on March 6, 1986. The applicant indicated on the Form G-325A that he resided in his native country, Columbia, from January 1981 to July 1985, was employed in Granero, Puerto Rico as a salesman from January 1985 to June 1985, and listed his residence in the United States commencing July 1985.

These factors further raise serious questions regarding the authenticity of the supporting documents submitted with the LIFE application and tend to establish that the applicant utilized the affidavits and letters in a fraudulent manner in an attempt to support his claim of *continuous* residence in the United States prior to July 17, 1985. The Form G-325A undermines the credibility of the applicant's claim to have *continuously* resided in the United States during the period in question and, therefore, it is concluded that he has failed to establish continuous residence in an unlawful status from prior to January 1, 1982, through May 4, 1988, as required.

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