

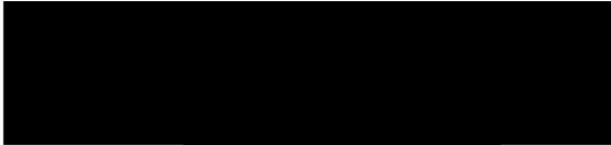
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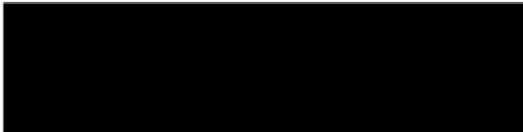
Office: NEW YORK

Date: NOV 28 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. 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.

John Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** On May 25, 2007, the District Director, New York, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application, finding that the applicant did not establish, by a preponderance of the evidence, that he entered the United States before January 1, 1982, and resided continuously in the United States, prior to January 1, 1982, and through May 4, 1988. The director noted that the applicant's absence from the United States from December 2, 1987, to February 1988 shows a failure to maintain the required continuous physical presence. The director also noted that the applicant did not submit documents, except for affidavits, to show presence in the United States prior to 1983.

On appeal, counsel for the applicant asserts that the director's decision was unfairly vague. Counsel asserts that the director "will try to find any means to deny" the applicant's case. Counsel asserts that the director did not specify the dates the applicant was absent from the United States. He states that it is unfair to conclude that an absence from December 2, 1987, to February 1988, lasted longer than 45 days.

An applicant for permanent resident status under section 1104 of the LIFE Act 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. See § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite period, 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 states 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 or 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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). See 8 C.F.R. § 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony 8 C.F.R. § 245a.12(f). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

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.

A LIFE Legalization applicant must also provide evidence establishing that, before October 1, 2000, he or she was a class member applicant in a legalization class-action lawsuit. See 8 C.F.R. § 245a.14. In this case, the record reflects that the applicant applied for such class membership by submitting a "Form for Determination of Class Membership in *CSS v. Meese* [CSS lawsuit]," accompanied by a Form I-687 "Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act)" dated February 1992.

On March 21, 2004, the applicant submitted the current application. On January 28, 2005, the applicant appeared for an interview based on the application.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden of establishing by a preponderance of the evidence, that his claim of entry into the United States before January 1, 1982, and continuous residence in the United States during the requisite period is probably true. Upon examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has failed to meet this burden.

Although the applicant submits some credible evidence of residence beginning in 1985, including a student identification card dated June 24, 1985, from the Spanish-American Institute in New York City; a Request For Social Security Number or Name Information for applicant's in 1986 from the Bartow Restaurant Corp.; envelopes date stamped December 2, 1986, January 5, 1987, and June 4, 1987, addressed to the applicant in the Bronx; and a receipt dated September 15, 1987, from the office of [REDACTED] and [REDACTED]; there is minimal evidence of

residence before 1985. The record of proceeding contains the following evidence relating to the applicant's residence in the United States before 1985:

Letters and Affidavits

- A bill from New York Telephone dated March 10, 1981. The bill contains a telephone number and a name, [REDACTED] but does not contain the applicant's full name or address. Therefore, it cannot be attributed to the applicant and can be given minimal weight as evidence of his required continuous residence;
- Two merchandise receipts attributable to the applicant. The applicant's name, address, and the date, February 2, 1982, are handwritten on a receipt from Trio Men's Wear in the Bronx, New York. The applicant's name and address are handwritten on a receipt from East Tremont Furniture Warehouse dated February 20, 1983. While a receipt for purchases may indicate presence in the United States on the date issued, it has minimal weight as evidence of continuous residence;
- Three "Affidavit of Witness" forms, all sworn to in March 1991, and signed by [REDACTED], and [REDACTED]. The form indicates that the affiant has personal knowledge that the applicant has resided in the United States in the Bronx, New York. The form allows the affiant to fill in a statement that he or she "is able to determine the date of the beginning of his or her acquaintance with the applicant in the United States from the following fact(s): \_\_\_\_." Mr. [REDACTED] added "I have been know with [REDACTED] since 1981. I met him by introduction of his family, actually he is living at the same apartment, with me. He is room-mate since December 1990." Mr. [REDACTED] added "He is my brother-in-law. I met him when he arrived in the United States on 1981." Mr. [REDACTED] added: "I met him on 1981, in a familiar meeting, and we are continued in a close relationship."

These affidavits, prepared in fill-in-the-blank form, contain minimal details regarding any relationship with the applicant during the requisite period. The affiants all fail to indicate any personal knowledge of the applicant's claimed entry to the United States or of the circumstances of his residence other than the city where he resided. Lacking such relevant detail, the affidavits can be afforded only minimal weight as evidence of the applicant's residence in the United States for the requisite period;

- An employment verification letter February 20, 1991, from the Seven Seas Restaurant & Cocktail Lounge. The manager of the restaurant states that the applicant worked there from January 1981 to November 1990 as a dishwasher and

cook. The letter states that the applicant was an excellent worker and very reliable person.

This letter can be given little evidentiary weight as they fail to comply with the regulatory requirements at 8 C.F.R. § 245a.2(d)(3)(i) . Specifically the employer does not provide the applicant's address at the time of employment, show periods of layoff, or declare whether the information was taken from company records, or 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;

- A letter from St. Joan of Arc Church in the Bronx, signed by [REDACTED]. Rev. [REDACTED] provides the applicant's current address. He states that the applicant attends the church and that "to the best of our knowledge, he has been living here since 1981. This is based on the testimony of [REDACTED], a neighbor, who has know [the applicant] since his sister Carmen moved here 25 years ago." The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, and other organizations. Attestations must: (1) identify the applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where the applicant resided during the membership period; (5) include the seal of the organization impressed on the letter or letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to.

This letter can be given minimal weight as evidence of the applicant's continuous residence. Specifically, the letter does not explain the origin of the information given, nor does it provide the address where the applicant resided during the statutory period. Furthermore, the letter does not state when the applicant first began attending the church or the frequency with which he attended;

- A handwritten letter dated December 26, 1990, from [REDACTED]. Mr. [REDACTED] states that he knows the applicant well and that he has known the applicant for 10 years, and the applicant's sister for over 15 years. He asserts that the applicant is a good father and a good husband. Mr. [REDACTED] does not indicate personal knowledge of the applicant's entry into the United States, and does not explain how, where, when, or under what circumstances he met the applicant. While he states that he knows the applicant well, [REDACTED] does not provide details that would indicate personal knowledge of the applicant's place of residence or details about the circumstances of his residence in the United States after 1985. Lacking such relevant details, this affidavit can be given minimal weight as evidence of the applicant's continuous residence during the requisite period;

- A handwritten letter dated January 15, 1991, from [REDACTED]. Dr. [REDACTED] states that the applicant has been treated in his clinic since June 1981. While Dr. [REDACTED] attests that the applicant was treated at the clinic, he does not provide the dates when the applicant was treated, what the applicant was treated for, or what treatment the doctor provided him. Furthermore, the letter is not supported by copies of contemporaneous records. Lacking such relevant details, this affidavit can only be given minimal weight as evidence of the applicant's continuous residence during the requisite period; and,
- A fill-in-the-blank "Sworn Declaration From a Third Party With Personal Knowledge of My Absence From the United States," notarized on May 15, 1991, from [REDACTED], the applicant's sister. Ms. [REDACTED] states that she knows her brother was absent from the United States during the year 1987 from December 2, 1987 to February 1988. This declaration, while possibly confirming the applicant's absence in 1987, has limited relevance as evidence of his residence in the United States during the requisite period.

For the reasons noted above, these documents can be given little evidentiary weight and are of little probative value as evidence of the applicant's residence and presence in the United States for the requisite period. As stated above, the evidence must be evaluated not by the quantity of evidence alone but by its quality.

The record of proceedings contains other documents, including a letter dated March 14, 1991, from the Crosstown Diner in the Bronx, a New York State Insurance Identification Card dated November 7, 1988; a receipt for a used 1982 Oldsmobile Omega dated October 26, 1988, from Balloutine Auto Sales; an undated "Official Odometer [Mileage] Statement" from Balloutine Auto Sales, Inc., in Hackensack, New Jersey; a merchandise receipt dated March 7, 1989, from the Y & S Pharmacy in the Bronx; an envelope date stamped June 14, 1989, addressed to the applicant in the Bronx, a merchandise receipt dated September 23, 1988, from Radio City Audio; receipts dated November 3, 1988, December 29, 1988, and April 10, 1989, from Ceiba Brokerage Corp. All of this evidence is dated after May 4, 1988, and does not address the applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have first entered the United States without inspection in November 1980, and to have resided for the duration of the requisite period in New York. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has failed to do so. In this case, his assertions regarding his entry are not supported by any credible evidence in the record.

Counsel's assertion that the director erroneously concluded that the applicant was outside of the country for more than 45 days is not persuasive. Counsel asserts that the applicant stated he was gone from December 2, 1987, until sometime in February 1988. Counsel asserts that without specific dates, the director could not have come to the conclusion that the absence lasted longer than 45 days. Counsel is incorrect. Using the calculation most generous to the applicant and assuming he returned to the United States on February 1, 1988, the applicant would still have been absent for 61 days.

Having examined each piece of evidence, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has not shown by a preponderance of the evidence he entered into the United States before January 1, 1982, and that he resided continuously in an unlawful status for the requisite period.

The absence of sufficiently detailed and probative documentation to corroborate the applicant's claim of entry and continuous residence for the entire requisite period, detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.12(e), 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 on documentation that lacks relevant details and any probative evidence of his entry and residence in the United States from prior to January 1, 1982 through May 4, 1988, the applicant has failed to establish by a preponderance of the evidence that he maintained continuous, unlawful residence in the United States as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act.

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