

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L2



FILE: [REDACTED]
MSC 02 137 63260

Office: NEW YORK

Date: OCT 22 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The 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 from then through May 4, 1988.

On appeal, counsel for the applicant submits a brief and additional documentation.

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 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 petitioner 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 petitioner 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 or petition.

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 since 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 issue in this proceeding is whether the applicant has furnished sufficient evidence to demonstrate that he entered the United States prior to January 1, 1982, and continuously resided in the United States in an unlawful status since January 1, 1982, through May 4, 1988.

A review of the record reflects that the applicant has provided sufficient documentation to establish his unlawful presence in the United States since in or about May 1985. However, there is insufficient evidence to establish that he continuously resided in the United States in an unlawful status before January 1, 1982, through April 1985. With regard to the time period prior to May 1985, the applicant has provided the following documentation:

1. A letter, dated March 18, 2007, from the applicant's brother, [REDACTED] of Shirley, New York, stating that the applicant, his wife and two children came to the United States in December 1981 and stayed with him in Brooklyn, New York, until June 1987, after which they moved to Baldwin, New York.
2. An affidavit, dated March 27, 2007, from [REDACTED], of Wheatly Height, New York, stating that she was aware of the fact that the applicant, her brother-in-law, came to the United States in December 1981. Ms. [REDACTED] explains that she had known the applicant's brother, [REDACTED], since 1980, later (in 1987) married the applicant's younger brother, [REDACTED], and had been at the applicant's residences in Brooklyn, New York many times.
3. A letter, dated April 26, 2007, from [REDACTED], stating that the applicant worked for him as a construction worker at Skyline Waterproofing Company, Brooklyn, New York, from January 1983 to September 1983. During that time period, Mr. [REDACTED] states that the applicant did not have a Social Security number and was paid in cash.
4. A letter, dated April 26, 2007, from [REDACTED], stating that he had known the applicant since December 1982. Mr. [REDACTED] an accountant, also states that he prepared the applicant's personal tax returns from 1987 through 2001, during which time the applicant was involved in various businesses – one of which was Benza Trading Inc., from 1989 to 1995.

5. An affidavit, dated May 11, 2005, from [REDACTED] stating that she had known the applicant, his wife and children since 1981, and that until 1986 the applicant resided in Brooklyn, New York, and that she very often babysat for his children.
6. An affidavit similar to the one from [REDACTED], above, also dated May 11, 2005, from [REDACTED], stating that the applicant resided in Brooklyn, New York, from 1981 until 1986.
7. A letter, dated March 19, 2007, from [REDACTED] of Medford, New York, stating that she had known the applicant's brother, [REDACTED] since 1980, and had heard of the applicant and his family since December 1981. She states that her first encounter with the applicant and his family was in February 1982.
8. A letter, dated March 28, 2007, from [REDACTED] of Elmont, New York, stating that he first met the applicant in Manhattan, New York, on December 31, 1981, and has had several meetings with the applicant and his family since that time.

The employment letter from [REDACTED] No. 3, above, does not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i) in that it fails to 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 affidavit from [REDACTED] (the applicant's sister-in-law), and the letter from [REDACTED]

Nos. 2 and 7, above, neither of them attest to their personal knowledge of the applicant's presence in the United States prior to January 1, 1982. Ms. [REDACTED] merely states that she was "aware of the fact" that the applicant came to the United States in December 1981, and [REDACTED] "had heard of" the applicant and his family beginning in December 1981, but did not meet him until February 1982. Similarly, [REDACTED] in No. 4, states that he did not meet the applicant until December 1982. Ms. [REDACTED] in No. 6, above, is generally vague as to how she dates her acquaintance, and both she and [REDACTED] in No. 8, do not provide details as to how often and under what circumstances they had contact with the applicant during the requisite period. It is unclear as to what basis they claim to have direct and personal knowledge of the events and circumstances of the applicant's residence in the United States since their first meetings with the applicant. As such, the above noted statements can be afforded minimal weight as evidence of the applicant's residence and presence in the United States throughout the requisite time period.

In summary, for the period prior to May 1985, the applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), and no hospital or medical records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv). The applicant also has not provided any documentation according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(v) or (vi). The only documentation provided by the applicant to establish his entry into the United States prior to January

1, 1982, consists of third-party letters and affidavits (“other relevant documentation”), in which on the applicant’s brother and [REDACTED] (Nos. 1 and 5, above) attest to direct contact with the applicant prior to January 1, 1982.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. 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. 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.

It is concluded that the applicant has failed to establish, by a preponderance of the evidence, that he entered the United States prior to January 1, 1982, and continuously resided in an unlawful status in the United States from before January 1, 1982, 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.