

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 20529-2090



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

L2

FILE:

MSC 01 326 60029

Office: FRESNO

Date:

28 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. All documents have been returned to the National Benefits Center. If your appeal was sustained, or if your case 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, Fresno, California. The decision 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 through May 4, 1988.

On appeal, counsel for the applicant asserts that the director erred in not considering the applicant's testimony given at his interview, and used only the information provided with the applicant's initial Form I-687. 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 – Request for Evidence (NOID), the director requested that the applicant submit evidence of his entry in the United States before January 1, 1982, and sufficient evidence demonstrating his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988. The director also requested that the applicant describe why he could not return to the United States in less than 30 days when he made a trip to Bangladesh in 1987. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated November 10, 2005, the director denied the instant 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. The director noted that the applicant responded to the NOID and submitted an explanation why he could not return to the United States within 30 days after his trip to Bangladesh in 1987, and an affidavit from [REDACTED] who gave an account of the applicant's various addresses in the United States; however, the address information in the affidavits submitted was inconsistent with the information provided by the applicant in his initial Form I-687. The director, therefore, determined that the evidence submitted was insufficient to establish his entry before January 1, 1982, and, that he had resided in a continuous unlawful status through May 4, 1988.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate his continuous residence in the United States in an unlawful status, and his physical presence, during the requisite period. In an attempt to establish continuous unlawful residence in the United States during the requisite period in this country since prior to January 1, 1982, the applicant submitted four declarations and a receipt as evidence to support his Form I-485 application. The AAO has reviewed the entire record. Here, the submitted evidence is not relevant, probative, and credible.

Affidavits & Letters

The applicant submitted the following:

1. A declaration from [REDACTED], dated May 24, 2001. Mr. [REDACTED] states that he has known the applicant since 1984, and lists the applicant's addresses from June 1984. Mr. [REDACTED] however, does not indicate whether and how he maintained a relationship with the applicant since they became acquainted.
2. A declaration from [REDACTED], dated May 24, 2001. Mr. [REDACTED] states that he has known the applicant since 1986, and lists the applicant's addresses from October 1987. [REDACTED] also states that from conversations with the applicant he knows that the applicant had been living in the United States for about 6-7 years before they became acquainted.
3. A declaration from [REDACTED], dated June 20, 2001. Mr. [REDACTED] states that he has known the applicant since 1987, and lists the applicant's addresses from October 1987. Mr. [REDACTED] also states that from daily conversations with the applicant he recalls that the applicant had been living in the United States for about 6 or 7 years before they became acquainted.
4. A declaration from [REDACTED] dated May 28, 2002. Mr. [REDACTED] states that he has known the applicant since 1981 when the applicant came to live with him at his apartment in San Rafael, California, and lists the applicant's addresses from June 1981. [REDACTED] also states that the applicant moved to Illinois after 2 -3 months, and states that he was aware that the applicant lived at the various addresses he listed. However, he does not indicate whether and how he maintained contact with the applicant during these years.

In addition, the applicant submitted a copy of a reservation receipt from Imperial 400 Motor Inn, for a motel room from June 4 – 5, 1984.

The applicant has submitted four declarations and a room reservation receipt in support of his application. However, the applicant has provided questionable documentation. The declarations provided all list addresses that are radically different from the address the applicant listed on his initial Form I-687. For example, the applicant indicates on his initial Form I-687, signed on April 2, 1990, that he resided at [REDACTED] Bellflower, California 90706, from February 1981. All four declarations, (including the declaration from [REDACTED] who attests that he has known the applicant to have resided in the United States since 1981, and that the applicant shared an apartment with him in California 1981 until the applicant moved to Illinois) indicate that the applicant resided at [REDACTED], Bellflower, California 90706 from 1987 to 1992 only.

Counsel asserts, on appeal, that the applicant did not understand English when he submitted his initial Form I-687, and therefore, he was not aware of the error in his address made by the preparer. Counsel's assertion, however, is inconsistent with the declaration from [REDACTED] which states that when he met the applicant in 1986 he determined that the applicant had been residing in the United States for 6-7 years because the applicant had mastered the language.

The above discrepancies cast considerable doubt on whether the applicant resided in the United States from 1981 as he claimed. 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. Therefore, the reliability of the remaining evidence offered by the applicant is suspect.

In addition, although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period. None of the affiants indicated how they dated their acquaintance with the applicant, how they met the applicant or how frequently they saw the applicant. It is also noted the applicant has not provided any reliable documents, such as school or medical records, for the relevant period. 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. 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 from prior to January 1, 1982, through May 4, 1988.

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.