

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

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



U.S. Citizenship  
and Immigration  
Services

L 2

FILE:

MSC 01 345 60874

Office: NEW YORK

Date:

**OCT 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:

SELF-REPRESENTED

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 "R. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** On August 29, 2006, the District Director, New York, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant failed to submit credible documents to establish, by a preponderance of the evidence, that he took up residence in the United States prior to January 1, 1982, and that he resided continuously here in an unlawful status from January 1, 1982, through May 4, 1988. The director noted that two separate letters of employment from the Kosher Deli contradicted each other. The director also noted that although the affiant [REDACTED] submitted identification and a copy of his passport, the director was unable to identify his alien file. Finally, the director concluded that the affidavit from [REDACTED] & [REDACTED] was not credible and not amenable to verification.

On appeal, the applicant asserts that he worked at the Kosher Deli from March 1981 to December 2001 for cash as a bus boy. He asserts that he is unable to get proof for that period of employment because he worked off the books. He asserts that the owner of [REDACTED], [REDACTED] [REDACTED] has known him since 1981. The applicant submits previously submitted documents, including an affidavit from [REDACTED]

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)."

On September 10, 2001, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On September 3, 2002, 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, 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.

The applicant has provided the following evidence relating to the requisite period:

Letters and affidavits

- An affidavit notarized on August 11, 2006, from [REDACTED] asserts that he first met the applicant on July 6, 1981, “in front of Conte’s Market at the corner of 86<sup>th</sup> Street and York Avenue.” He states that the applicant was looking for a job. He then states that after a week, the applicant came again and they went to Canal Street in Chinatown and got a job for the applicant at a perfume store. Mr. [REDACTED] states that he visited the applicant’s store several times until the store closed in January 1988. He asserts that he and the applicant have been good friends since then and that they see each other often. He asserts that the applicant told him that he came to the United States in January 1981 and that he went to visit his family in Bangladesh from February 1988 to March 1988.

While [REDACTED] asserts when and where he met the applicant, he does not explain how it is that he recalls that it was specifically July 6, 1981, that he met the applicant. Furthermore, [REDACTED] does not explain the circumstances under which he met the applicant and the nature of their relationship to explain why he would accompany the applicant to Chinatown a week after having met him to help him find a job. Although he asserts that he visited the applicant’s store several times before January 1988, [REDACTED] does not indicate how frequently he saw the applicant at his place of employment and does not indicate that he otherwise has any personal knowledge of the applicant’s continuous residence in the United States during the statutory period. Finally, he asserts that the applicant told him that he came to United States in January 1981, but Mr. [REDACTED] does not indicate that he has any first hand, personal knowledge of the applicant’s initial entry. Given this lack of detail, the letter can be given minimal weight as evidence of the applicant’s continuous residence or physical presence in the United States during the requisite period;

- A letter dated December 14, 1990, from the Kosher Deli, indicating that the applicant worked there from January 1981 to February 1983. The signature on the letter is illegible and the letter does not otherwise indicate who signed it. The letter asserts that the applicant was rehired in March 1990 and still worked for the restaurant when the letter was written. The letter states that applicant earns a salary of \$200. The individual who signed the letter indicated that the applicant is a good and hardworking employee.

By regulation, letters from employers should be on employer letterhead stationery if available and must include the applicant’s address at the time of employment, exact period of employment and layoffs, duties with the company; whether the information was taken from official company records; and where records are located and whether CIS may have access to the records; if records are unavailable, an affidavit explaining this shall also state the employer’s willingness to come forward and give testimony if requested. 8 C.F.R. § 245a.2(d)(3)(i).

This letter does not meet these regulatory standards. It does not provide the applicant's address; the affiant does not offer to either produce official company records or to testify regarding unavailable records. There is no official indication that the affiant is connected to the relevant business. As such, this letter can be accorded only minimal weight as evidence of residence during the requisite period;

- Two statements from [REDACTED], an acquaintance of the applicant. In a letter on the Islamic Council of America, Inc. letterhead, dated February 26, 1997, Mr. [REDACTED] certifies that he has known the applicant "for a long time" and that "he now lives at [REDACTED], Brooklyn, NY. Mr. [REDACTED] wishes the applicant luck. Although Mr. [REDACTED] claims to have known the applicant for a long time, he does not indicate any personal knowledge of the applicant's claimed entry, he does not list the applicant's addresses, and does not provide information demonstrating any personal knowledge of the applicant's residence in the United States during the requisite period. Because this letter is significantly lacking in relevant detail, it lacks probative value and has only minimal weight as evidence of the applicant's residence in the United States during the requisite period;

An "affidavit" form notarized on April 9, 1991. The form, signed by [REDACTED] allows the affiant to state that he or she has personal knowledge that the applicant has resided in the United States and to fill in the city, town, and state and month and year of these residences. Mr. [REDACTED] left that part blank. The form further 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 met [the applicant] in a family gathering in December 1981 and we became friends till now." This affidavit, prepared on a fill-in-the-blank form, contains no details regarding any relationship with the applicant during the requisite period. Mr. [REDACTED] does not include the applicant's addresses, and fails to indicate any personal knowledge of the applicant's claimed entry to the United States during that year or of the circumstances of his residence during their claimed 10 year relationship. There is no evidence that the affiant resided in the United States during the requisite period and no details of any relationship that would lend credibility to his statement. These letters therefore have minimal weight as evidence of the applicant's residence in the United States during the requisite period;

- A letter from [REDACTED] dated December 12, 1990. Mr. [REDACTED] asserts that the applicant was his roommate at [REDACTED], in New York, from January 1981 to September 1984. This is consistent with the address listed by the applicant on his form I-687. Mr. [REDACTED] states that the applicant paid \$150 per month rent. He states that the applicant is trustworthy. While Mr. [REDACTED] states that the applicant lived with him from 1981 to 1984, he fails to submit corroborating

evidence of the applicant's residence in the house, such as a lease or rent receipts, or in the alternative, an explanation of the payment arrangements that existed with the applicant. In addition, Mr. [REDACTED] provides no documentation to corroborate the fact that he, himself, lived at the mentioned address from 1981 to 1984. 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. Mr. [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 1984. Lacking such relevant details, this affidavit can be given minimal weight as evidence of the applicant's continuous residence during the requisite period; and,

- A letter dated April 19, 1991, from [REDACTED] h. Mr. [REDACTED] provides the applicant's address at the time the letter was written and states that the applicant befriended him since his arrival in the United States in January 1983. He states that the applicant is an honest, dependable and hardworking man. Although Mr. [REDACTED] claims to have known the applicant since 1983, he does not list the applicant's addresses, and does not provide information demonstrating any personal knowledge of the applicant's residence in the United States during the requisite period. Because this letter is significantly lacking in relevant detail, it lacks probative value and has only minimal weight as evidence of the applicant's 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 previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, the affidavit did not include any supporting documentation of the affiant's presence in the United States during the requisite period.

The record of proceedings contains other documents, including, a letter dated March 3, 1997, from Palm House indicating that the applicant had been employed there since January 3, 1995, and a pay stub from the Kosher Deli Group for the pay period August 5, 2006, to August 8, 2006. These documents all indicate physical presence after May 4, 1988, and do 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 January 1981, 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.

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.

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 affidavits, which lack relevant details, and the lack of 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. The applicant is, therefore, 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.