

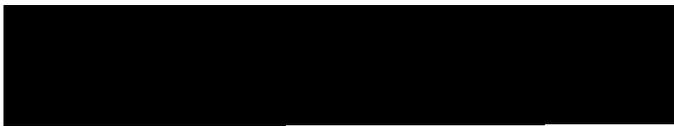
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FILE: [REDACTED] Office: PHILADELPHIA Date: **SEP 02 2008**
MSC 02 155 64295

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:
[REDACTED]

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 District Director, Philadelphia, Pennsylvania. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The district director denied the application on the ground that the applicant failed to establish he entered the United States before January 1, 1982, and had continuously resided in the United States in unlawful status from then through May 4, 1988.

On appeal, counsel for the applicant submits a brief statement 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 its amenability to verification. *See* 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 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.13(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.

The record reflects that the applicant, a native and citizen of the Dominican Republic, submitted a Form I-687, Application for Status as a Temporary Resident (under Section 245A of the Immigration and Nationality Act) in or about July 1990. At that time, the applicant claimed to have initially entered the United States without inspection on December 20, 1980, and to have departed the United States on only one occasion – from July 1987, to September 1987 – in order to return to the Dominican Republic to attend his father's funeral, returning to the United States by boat, again without inspection. The applicant submitted evidence of his travel from New York to Santo Domingo, Dominican Republic, on July 29, 1987, and a death certificate for his father, with English translation (showing that his father, [REDACTED], died on July 17, 1987). The applicant also submitted the following documentation in an attempt to establish his continuous unlawful residence in the United States from prior to January 1, 1982, through May 4, 1988:

1. A letter, dated July 24, 1990, from [REDACTED], manager of M & G Awning and Signs, Bronx, New York, stating that the applicant was employed as an installer at \$5.00 per hour from February 1981 to December 1989. A business card attached to the letter indicated that [REDACTED] was "Shop Manager" of the company.
2. Internal Revenue Service (IRS) Forms W-2, Wage and Tax Statements, for the years 1982, 1984, and 1985, purportedly issued to him by M & G Awnings and Signs, Inc.
3. Envelopes mailed to the applicant in the United States, postmarked in 1982.

The applicant filed the current Form I-485, Application to Register Permanent Resident or Adjust Status, under the LIFE Act on March 4, 2002. In support of the Form I-485, the applicant submitted the following additional documentation in an attempt to establish his continuous unlawful residence in the United States from prior to January 1, 1982, through May 4, 1988:

4. Similar affidavits, dated February 2002, from [REDACTED] and [REDACTED] stating that they had known the applicant since 1981, and had never seen him travel abroad except for short trips of about two weeks each in or about 1987/1988, and 1992.

On February 15, 2006, the district director issued a Notice of Intent to Deny (NOID) the application, stating that the applicant had failed to establish his continuous unlawful status in the United States from before January 1, 1982, through May 4, 1988. The district director noted that the Forms W-2 submitted by the applicant (in No. 2, above) did not appear to be valid in that they did not contain the employer's identification or state numbers, and that a search conducted of business records in the United States failed to identify any record that M & G Awning and Signs ever existed. The district director also noted that the affidavits submitted (in No. 4) were generic in nature and that the affiants had merely attested to having known the applicant since 1981, not to having seen the applicant in the United States in 1981. The district director further noted that the employment letter from M & G Awning and Signs (No. 1) was signed by [REDACTED] "Manager," but that the business card attached to the letter showed [REDACTED] as "Shop Manager."

In response to the NOID, the applicant submitted a letter stating that if the affiants said they had known him since 1981, obviously they meant that they had seen him in the United States since 1981. He also stated that he believed that [REDACTED] was a general manager and that [REDACTED] was a manager who supervised the workers in the shop, and that, with regard to the Forms W-2, he had "no obligation to know the correct accountancy." In support of his response, the applicant submitted:

5. A letter, notarized on May 11, 2006, from [REDACTED] of [REDACTED] New York, New York, stating, in part, that she had known the applicant since the beginning of 1980 when her father, [REDACTED], had been a superintendent in the building and the applicant rented an apartment.
6. A letter, notarized on May 11, 2006, from [REDACTED] of [REDACTED] New York, New York, stating, in part, that she met the applicant in New York in 1985.

In a Notice of Denial (NOD), the district director denied the application. The district director noted that the letter from [REDACTED] (No 5, above) did not provide a contact telephone number and that the applicant had provided no evidence that [REDACTED] was the superintendent of the building at [REDACTED]

On appeal, counsel for the applicant asserts that the evidence provided by the applicant was not given appropriate weight, was misevaluated, that there was a misperception of facts, and that a request for the applicant to gather more evidence or locate old witnesses is unreasonable. Counsel also asserts that it is an infringement on the applicant's due process, and an abuse of discretion to misevaluate the evidence submitted and to reject supplemental testimonial evidence. In support of the appeal, counsel submits:

7. A letter, dated August 3, 2006, from [REDACTED], Vice-President of Brenillee Corp., Bronx, New York, stating, in part, that she is the previous owner of [REDACTED] New York, New York, and tha [REDACTED] was superintendent of that building form 1975 until 1991 when he retired.
8. A letter from [REDACTED] dated August 8, 2006, providing her telephone number and stating, in part, that her now deceased father, [REDACTED] was superintendent at [REDACTED], New York, New York, from 1975 to 1991.

The employment letter from M & G Awning and Signs (No. 1, above) does not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i) in that it does not provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; or declare whether the information was taken from company records identify the location of such records and state whether such records are accessible or, in the alternative state the reason why such records are unavailable. As previously noted by the district director, the IRS Forms W-2 (No. 2) do not appear to be valid, and the applicant has failed, in response to the NOID, to provide a satisfactory explanation regarding their validity. The affidavits provided in No. 4. provide little detail as to the affiants knowledge of the applicant's entry and lack details that would lend credibility to their having direct and personal knowledge of the events and circumstances of the applicant's residence in the United States during the relevant period.

In summary, 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 documentation (other than the suspect Forms W-2 noted in No. 2 above) according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (K). The documentation provided by the applicant consists primarily of third-party affidavits, "other relevant documentation," that afford minimal evidentiary weight and little probative value as evidence of the applicant's residence and presence in the United States during the relevant period.

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.

The applicant has failed to establish that he maintained continuous physical presence in the in the United States during the period from November 6, 1986 through May 4, 1988, as required by 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.