

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**



**U.S. Citizenship  
and Immigration  
Services**

**PUBLIC COPY**



L2

FILE:

MSC 03 242 60324

Office: NEW YORK

Date:

**SEP 03 2008**

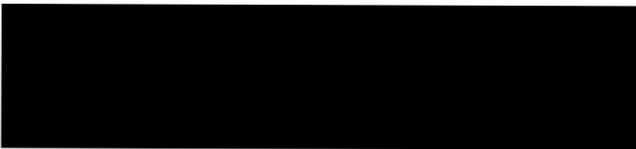
IN RE: Applicant:



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. 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.

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

The district director determined that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal the applicant states that he has resided continuously in the United States from 1981 to 1988 and has submitted sufficient evidence to establish his eligibility. The applicant 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).

“Continuous unlawful residence” is defined at 8 C.F.R. § 245a.15(c)(1), as follows: An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded *forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed.

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 (NOID), dated April 9, 2007, the director stated that the applicant failed to submit sufficient evidence demonstrating that he entered the United States before January 1, 1982, and his continuous unlawful residence and his physical presence in the United States, during the requisite period. The director noted that during an interview the applicant stated that he had departed the United States for Jamaica in June 1982 and returned in September 1982 which represented a single absence of over 45 days. The director determined that the applicant had exceeded the forty-five (45) day limit for a single absence from the United States based on the applicant’s travel history as evidenced in the applicant’s passport. For these reasons, the director concluded that the applicant could not establish his continuous residence during the requisite period. The director granted the applicant thirty (30) days to submit additional evidence.

In response, the applicant submitted a letter denying that he had stated that he had been absent from June 1982 to September 1982. The applicant stated further that the period of absence was for one month from June 1982 to July 1982. **No additional evidence was submitted. The record reflects that the applicant stated at the interview that he departed the United States for Jamaica in June 1982 and returned in September 1982.**

In the Notice of Decision, dated May 25, 2007, the director denied the instant application based on the reasons stated in the NOID. The director noted that the applicant responded to the NOID but failed to overcome the reasons for denial.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period. The applicant submitted letters, affidavits, and other documents as evidence to

support his Form I-485 application. Here, the submitted evidence is not relevant, probative, and credible.

Affidavits and letters

The applicant submitted the following evidence:

1. An affidavit from [REDACTED], dated April 19, 1991, stating that the applicant lived with her at [REDACTED] Jamaica, New York 11434, from January 1, 1981 to 1991. The affiant also states that household bills and receipts are in her name, but, the applicant contributed towards the rent and household bills. Ms [REDACTED] however, does not state what relationship she had with the applicant.
2. Affidavits from [REDACTED] notarized on July 16, 1991, and from [REDACTED] notarized on June 15, 1991. The affiants state that they have known the applicant resided at [REDACTED] Jamaica, New York, from January 1981. The affiants, however, does not indicate how they date his acquaintance with the applicant, and what relationship they had with the applicant, and how they maintained a relationship with the applicant during that time.
3. In addition, the applicant submitted a letter from [REDACTED] Founder / Superintendent of The Christ Pentecostal Church, Inc., located in Brooklyn, New York. Rev. [REDACTED] states that the applicant has been a member since 1987.

The applicant has submitted affidavits and other evidence in an attempt to establish his continuous residence. The evidence of record, however, is clear that the applicant cannot establish the requisite continuous residence. The applicant's claim that he has resided continuously in an unlawful status since prior to January 1, 1982, is not credible. Contrary to the applicant's claim, the record is clear that the applicant was issued a D non-immigrant visa at the U.S Embassy in Nassau, Bahamas, on February 11, 1982, and on June 30, 1982, the U.S. Embassy in Kingston, Jamaica, issued the applicant a C-1 non-immigrant visa. His passport reveals two entry stamps via Miami International airport, on July 24, 1982, and again on September 25, 1982. The passport copy also reveals additional unclear stamps indicating departures in July 1982 and September 1982. Therefore, the applicant cannot establish that he has resided continuously in an unlawful status since January 1, 1982. The record clearly reflects that the applicant was issued a non-immigrant visa on February 11, 1982, in Nassau, Bahamas, and therefore, he was outside of the United States during the requisite period. The applicant has failed to provide evidence to overcome the evidence of record.

In addition, the affidavits submitted by the applicant are inconsistent. Specifically, [REDACTED] one of the affiants, states that the applicant lived with her at [REDACTED] Jamaica, New York 11434, from January 1, 1981 to 1991, and contributed towards rent and household bills. However, the affidavits from [REDACTED] and [REDACTED], state that the applicant resided

at a different address, at [REDACTED] Jamaica, New York, during the same period from January 1981 to 1991.

The above discrepancies cast doubt on whether the applicant has been in the United States in unlawful status since prior to January 1, 1982 as he claims. 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 his testimony and in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status throughout the requisite period.

For this reason, even if the applicant can overcome the issue of a prolonged absence, he cannot establish that he resided continuously in the United States in an unlawful status throughout the requisite period.

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.