

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

[REDACTED]

L2

FILE: [REDACTED]
MSC 02 01 364 60319

Office: NEW YORK

Date: **SEP 26 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:

[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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: On June 2, 2007, the District Director, New York, New York, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application, finding that the applicant failed to establish that he entered 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 the affidavits the applicant submitted appeared neither credible nor verifiable. The director stated that there was no proof that the affiants had direct personal knowledge of the events they talked about in their affidavits.

On appeal, counsel for the applicant asserts that the documentation the applicant submitted is all he could produce and that there are no other documents the applicant can send at this time. Counsel asserts that the applicant complied with the regulations and is eligible for the benefit sought.

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)," dated November 7, 1991.

On September 29, 2001, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On February 4, 2004, 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

- Two duplicate "Affidavit" forms, notarized in September and October 1990. The forms, signed by [REDACTED] and Antonio Consepcion list the applicant's address in [REDACTED] at the time the forms were notarized. The form language allows the affiant to fill in a statement that he or she has known the

applicant since ____.” _____ added “the sum[m]er of 1982, at my br[o]ther friends house.” _____ added “he came to New York, as he stayed for a short time in my home.” While _____ asserts that she has known the applicant since 1982, she 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 1982. _____ assert that he has known the applicant since the applicant came to New York but does not state the date the applicant came and provides no details that would indicate that he has any personal knowledge of the applicant’s entry into the United States during the claimed year. These affidavits, prepared on duplicate fill-in-the-blank forms, contain no details regarding any relationship with the applicant during the requisite period and fail to even state when or where the affiants and the applicant met. Lacking such relevant details, these forms can be given minimal weight as evidence of the applicant’s continuous residence during the requisite period; and,

- An “Affidavit of Witness” form, notarized on December 30, 1991. The form, signed by _____ lists the applicant’s address in New York from September 1981 through the present. The form language states that the affiant has personal knowledge that the applicant has resided in the United States at the addresses listed. The form 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): ____.” _____ added _____ is a mechanic, so the first time I met him was when he fixed one my cars.” This affidavit, prepared on a fill-in-the-blank form, contains no details regarding any relationship with the applicant during the requisite period and fails to state when, where, or under what circumstances _____-met the applicant. _____ 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 other than his address. Lacking such relevant detail, the affidavit can be afforded only minimal weight as evidence of the applicant’s residence in the United States for the requisite period.

For the reasons noted above, these affidavits 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. Although the applicant has submitted two affidavits in support of his application, he has not provided any contemporaneous evidence of residence in the United States during the duration of 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, none of the affidavits included any supporting documentation of the affiant’s presence in the United States during the requisite period. The duplicative language and use of forms also detract from the probative value of the affidavits.

The record of proceedings contains other documents, including a letter from [REDACTED] of [REDACTED], certifying that the applicant worked for his company since February 1989. None of this evidence addresses 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 September 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.