U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529-2090

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

L2

[redacted]

FILE: [redacted] Office: NEW YORK, NEW YORK Date: FEB 17 2009

MSC 01 300 60351

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. If your appeal was dismissed or rejected, all documents have been forwarded to the U.S. Citizenship and Immigration Services National Records Center. 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. If your appeal was sustained, or if the matter was remanded for further action, the record of proceedings was returned to the office that originally issued a decision in your case, and you will be contacted.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application on August 18, 2007 because she found that the evidence in the record failed to demonstrate that it was more likely than not that the applicant resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988.

On appeal, the applicant indicated that the evidence does demonstrate that he resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988, and that he is otherwise qualified to adjust to lawful permanent resident status under the LIFE Act.

The AAO maintains plenary power to review this matter on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The federal courts have long recognized the AAO's *de novo* review authority. *See,* e.g. *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted on appeal.[1]

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 through May 4, 1988. *See* LIFE Act § 1104(c)(2)(B) and 8 C.F.R. § 245a.11(b).

The regulation at 8 C.F.R. § 245a.15(c) provides, in relevant part, that an alien shall be regarded as having resided continuously in the United States if:

> (1) 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.

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).

---

[1] The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in this case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

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 application and other statements of the applicant, both oral and written, are evidence to be considered. *See Matter of E-M-*, 20 I&N Dec. 77 at 79. The applicant's statements must not be the applicant's only evidence used to establish eligibility, but they should be viewed as valid evidence. *Id.*

The absence of contemporaneous evidence is not necessarily fatal to the applicant's claim of continuous residence in the United States during the statutory period. *See Id.* at 82-83. Affidavits that are consistent and verifiable may be sufficient to demonstrate continuous residence. *See Id.*

Documentary evidence may be in the format prescribed by U.S. Citizenship and Immigration Services (USCIS) regulations. *See Id.* at 80. For example, 8 C.F.R. § 245a.2(d)(3)(i) states that a letter from an employer should be signed by the employer under penalty of perjury and "state the employer's willingness to come forward and give testimony if requested." *Id.* Letters from employers that do not comply with such requirements do not have to be accorded as much weight as letters that do comply. *Id.* However, even if not in compliance with this regulation, a letter from an employer should be considered as a "relevant document" under 8 C.F.R. § 245a.2(d)(3)(iv)(L). *Id.* Also, affidavits that have been properly attested to may be given more weight than a letter or statement. *Id.* Nonetheless in determining the weight of a statement, it should be examined first to determine upon what basis it was made and whether the statement is internally consistent, plausible and credible. *Id.* What is most important is whether the statement is consistent with the other evidence in the record. *Id.*

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. *Id.* at 79-80. 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.* at 80. 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 petitioner or 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 petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (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, to deny the application or petition.

At issue in this proceeding is whether the applicant is able to establish that he resided continuously in the United States from some date prior to January 1, 1982 through May 4, 1988. Here, the applicant has not met that burden.

On or near May 9, 1989, the applicant applied for class membership in a legalization class-action lawsuit and filed Form I-687, Application for Status as a Temporary Resident. On July 27, 2001, he filed Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

The record includes statements relating to the applicant's claim that he resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988, such as:

1) The statement of [redacted] dated August 23, 1988 on which [redacted] indicates that he is the applicant's brother and that the applicant visited him in Canada during April 1988. The statement may not be seen as a duly notarized affidavit as the date and the applicant's name were added only after white-out was applied to cover what had appeared on the document before the date of August 23, 1988 and the applicant's name were added to the document. There is no copy of [redacted] identity document attached to the statement, or elsewhere in the record.

2) The statement of of Brooklyn, New York dated February 22, 1989 which is not signed that indicates that met the applicant when attending the applicant's older brother's birthday party. It also indicates that [redacted] has personal knowledge of the applicant's address in the United States during the statutory period. The statement does not specify when [redacted] met the applicant or how frequently he saw him during the statutory period. There is no copy of [redacted] identity document or of evidence that [redacted] resided in the United States during the statutory period attached to the statement, or elsewhere in the record.

3) The Form I-687 which the applicant signed under penalty of perjury on which the applicant specified at item 31 that he has no brothers and no sisters.

4) The undated statement of Imam [redacted] on [redacted] Inc., Bronx, New York letterhead stationery that indicates that [redacted] knows the applicant and that the applicant has been attending his mosque since the late 1980s.

5) The affidavit of dated June 26, 2001 which attests that the affiant's occupation is "anthropology/assistant curator" and that he has personal knowledge of the applicant's address in the United States from 1996 through the date that he signed that form. There is no copy of [redacted]

identity document or evidence that he was in the United States during the statutory period attached to the affidavit, or elsewhere in the record.

On May 8, 2007, the director issued a notice of intent to deny (NOID) in which she indicated that she intended to deny the application for reasons which include the following: the statements and affidavits submitted into the record are not sufficiently detailed and credible in that they do not include: any copies of identity documents of the individuals who wrote the statements, nor any documentary evidence that supports the claim that those who wrote the statements resided in the United States during the statutory period. She also pointed out that one affiant, [redacted], claims to be the applicant's brother. Yet, on the Form I-687 the applicant stated that he has no siblings. Also, [redacted] did not sign the statement in the record that is attributed to him. Thus, the director concluded that the applicant failed to submit credible evidence to support his claim of continuous residence in the United States during the statutory period.

In the NOID, the director also indicated that the applicant has an obligation to provide documentary evidence of having made an entry into the United States prior to January 1, 1982. This point in the NOID is withdrawn. There is no statutory or regulatory requirement that a LIFE legalization applicant must, in all instances, submit documentary evidence of having made an entry prior to January 1, 1982.

The applicant did not submit a reply to the NOID. On August 18, 2007, the director denied the application based on the reasons set forth in the NOID.

On appeal, the applicant asserted through counsel that the evidence in the record supports his claim that he resided continuously in the United States throughout the statutory period. He also indicated that the discrepancies pointed out by the director in the NOID are too minor to be considered material.

As pointed out by the director, in [redacted]s statement dated August 23, 1988, he identifies himself as the applicant's brother. However, on the Form I-687, the applicant specified that he had no siblings. Also, the AAO would note that the statement in the record that is not signed and that is attributed to [redacted]n indicates that the applicant has an older brother.

These discrepancies cast serious doubt on all the evidence in the record, including the applicant's claim that he resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988. Such inconsistencies may only be overcome through independent, objective evidence of the applicant's claim that he resided continuously in the United States during the statutory period; however, there is no relevant, contemporaneous evidence in the record.

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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

This office finds that the various statements and affidavits in the record which were submitted to substantiate the applicant's claim of continuous residence in the United States during the statutory period are not objective, independent evidence such that they might overcome the deficiencies in the record relating to the applicant's claim that he maintained continuous residence in the United States from a date prior to January 1, 1982 and throughout the statutory period, and that these documents are not probative in this matter.

The applicant has failed to establish continuous residence in an unlawful status in the United States from some date prior to January 1, 1982 and through May 4, 1988. Thus, he is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.