

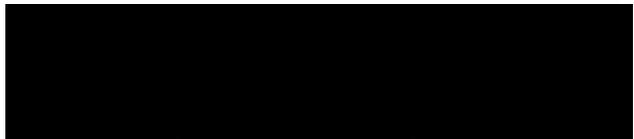
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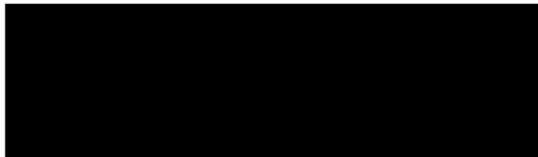
Office: NEW YORK

Date: **MAR 27 2009**

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:



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.

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. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be summarily dismissed.

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

On appeal, counsel for the applicant submits a brief.

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.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)(v), states that attestations from churches, unions, or other organizations should: identify the applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where the applicant resided during the membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

The applicant filed a Form I-485, Application to Register Permanent Resident Status or Adjust Status, under the LIFE Act on June 3, 2003. On August 30, 2007, the director denied the application. The applicant, through counsel, filed a timely appeal from that decision on September 30, 2007.

The issue in this proceeding is whether the applicant has established that he continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

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 record reflects that the applicant has submitted the following documentation in an attempt to establish his continuous unlawful residence in the United States during the requisite time period:

Church Letters:

1. A letter, dated October 12, 1989, from [REDACTED], identified as the Parish Reverend of St. Rose of Lima Church in New York, New York, stating that the applicant had been a member of the parish and used to be a member of a very

special group called the Sacred Heart Society, since he came to the United States in 1981. In a second letter from the church, dated February 28, 2003, Rev. [REDACTED], identified as the Pastor of the church, states that the applicant had been a member since 1981 and attends services on a regular basis.

The church letters provided do not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(v) in that they do not show the address(es) where the applicant resided throughout the membership period or establish the origin of the information being attested to (i.e., whether the information being attested to is anecdotal or comes from church membership records).

Affidavits from Acquaintances:

2. Similar fill-in-the-blank affidavits, dated October 10, 1989, from [REDACTED] and [REDACTED] stating that the applicant had resided in New York from August 1981 to November 1989.
3. Similar letters, dated in September 1990, from [REDACTED] stating that the applicant had been his tailor since since 1986; [REDACTED] stating that the applicant had been his tailor since October 1984; and, [REDACTED] stating that the applicant resided at her apartment since he came to the United States in August 1981 until he moved to Massachusetts in November 1989.
4. A letter, dated December 18, 2004, from [REDACTED] stating that he had known the applicant "since the beginning of 1981."
5. A letter, notarized on January 14, 2005, from [REDACTED] stating that he first met the applicant in March 1982 through his wife who is the applicant's cousin, and that the applicant took a short trip to the Dominican Republic in 1987.
6. Similar letters, dated in September 2005, from [REDACTED] and [REDACTED] states that he first met the applicant in New York in December 1981 and that he has been in constant contact with the applicant since either personally or by phone on an average of two or three time per month. [REDACTED] states that he has known the applicant for the last seven years.
7. An undated letter from [REDACTED] stating that the applicant departed the United States for a trip to the Dominican Republic on September 10, 1987.

The letters from acquaintances lack specific details as to how the affiants first met the applicant, what their relationships with the applicant were, and how frequently and under what circumstances they saw the applicant during the requisite period, and provide little credence to their direct and personal knowledge of the events and circumstances of the applicant residence in the United States throughout the requisite period. As such, the statements can only be afforded

only minimal weight as evidence of the applicant's residence and presence in the United States throughout the requisite period.

Other Documentation:

8. An undated letter from [REDACTED], identified as a Supervisor at The Presbyterian Hospital in the City of New York, stating that the applicant had been seen regularly at the [REDACTED] for check-ups since 1982. In a letter, dated February 24, 2003, [REDACTED] also identified as a Supervisor at the hospital states that the applicant had been seen regularly at the clinic since July 13, 1982.

These letters indicate that the applicant was present in the United States in mid 1982 but contain no further information as to any other dates that the applicant was "regularly" seen as a patient.

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), no hospital or medical records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv), and no attestations from churches, unions, or other organizations that comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(v). The applicant also has not provided documentation (including, for example, money order receipts, passport entries, children's birth certificates, bank book transactions, letters of correspondence, a Social Security card, Selective Service card, automobile, contract, and insurance documentation, deeds or mortgage contracts, tax receipts, or insurance policies) 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 solely of third-party affidavits ("other relevant documentation"). These documents lack specific details as to how the affiants knew the applicant – how often and under what circumstances they had contact with the applicant – during the requisite time period from prior to January 1, 1982 through May 4, 1988.

It is noted that in No. 1, above, [REDACTED] indicates that the applicant had attended services at the church in New York on a regular basis from 1981 until at least February 1993. However, in No. 3, [REDACTED] indicates that the applicant moved to Massachusetts in November 1989. It seems doubtful that the applicant could have regularly attended a church in New York after having moved to Massachusetts in 1989.

Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any 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. (Comm. 1988).

The regulation at 8 C.F.R. § 245a.12(e) provides that “[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods.” Preponderance of the evidence is defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black’s Law Dictionary 1064 (5th ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

It is concluded that the applicant has failed to establish, by a preponderance of the evidence, that he entered the United States before January 1, 1982, and maintained continuous unlawful residence since such date through May 4, 1988, as required for eligibility for adjustment of status to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Thus, he is ineligible for permanent resident status under section 1104 of the LIFE Act.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

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