

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L2

FILE:

MSC 02 120 64299

Office: NEW YORK

Date: **MAY 26 2009**

IN RE: Applicant:

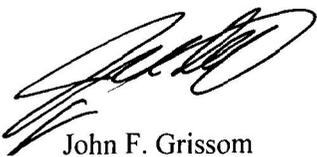
APPLICATION:

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.


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 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 applicant filed a Form I-485, Application to Register Permanent Resident Status or Adjust Status, under the LIFE Act on January 28, 2002. On October 5, 2007, the director denied the application. The applicant, through counsel, filed a timely appeal from that decision on November 5, 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 submitted a variety of letters and affidavits, receipts, a physician's letter, and other documentation in an attempt to establish his continuous unlawful residence in the United States during the requisite time period. On August 21, 2007, the director mailed the applicant (and counsel) a Notice of Intent to Deny (NOID) the application detailing the documentation submitted. The director specifically noted numerous deficiencies, inconsistencies, and lack of credibility and amenability to verification issues regarding the documentation submitted. For example, director noted that:

- A program from [REDACTED], dated July 7, 1983, contained pre-printed lettering in a yellowish color, but the applicant's name was written in using a different ink.
- A certificate of appreciation, dated June 24, 1986 did not indicate what organization issued the letter or where.
- Photocopies of rent receipts were unverifiable
- An employment letter from El Inca restaurant, dated June 30, 1986, attested to the applicant's employment from July 1985 through June 1986; however, United

States Citizenship and Immigration Service (USCIS) efforts to contact the business at the telephone number provided were unsuccessful.

- An employment letter from Eastern Empire Contracting Inc., dated April 16, 1990, attested to the applicant's employment from 1981 to 1986; however, USCIS efforts to contact the business at the telephone number provided were unsuccessful. Furthermore, a search of New York's Department of State Division of Corporations indicated the business was not started until February 1987.
- An undated employment letter from Tekniks Construcion Inc. attested to the applicant's employment from 1986 to 1988; however, USCIS efforts to contact the business at the telephone number provided were unsuccessful. Furthermore, a search of New York's Department of State Division of Corporations indicated the business was not started until November 1988.
- Attempts by USCIS to contact [REDACTED], Habib Bank Limited, and Acme Cleaners in order to verify information provided were unsuccessful.
- There was no telephone number provided for The Holamic Center.
- The phone number provided for the Islamic Center of New York connected to a different business
- A Western Union receipt contained numerous typographical and grammatical errors.
- A letter from Pan Am dated December 1987 was not on official company letterhead.
- A letter from NYNEX, dated June 1982, appeared fraudulent, since the company was not formed until 1984.
- A receipt from Trader Horn had an illegible date.
- The telephone number on a receipt from Quality General Grocery had been disconnected.
- A receipt from Franklin Pharmacy, dated February 1987, showed the applicant had paid for a Lipitor prescription; however, the Federal Drug Administration (FDA) did not approve Lipitor for sale until 1999.
- A receipt from Barney's Pharmacy, dated March 1982, showed the applicant had paid for a Lovastin prescription; however, the Federal Drug Administration (FDA) did not approve Lovastin for sale until 1987.

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).

In a response to the NOID, counsel failed to provide any new evidence and failed to address the numerous inconsistencies, discrepancies, and lack of credibility and amenability to verification of the documentation submitted in support of the application. Counsel merely asserted that the

applicant had met his burden of proof, had already been granted temporary residence, and that the information provided could have been verified at the time it was submitted. Counsel's assertions were not persuasive; therefore, the director denied the application.

On appeal, counsel again fails to provide any new evidence or any specific rebuttal to the inconsistencies, discrepancies, and lack of credibility and amenability to verification of the documentation noted by the director. Counsel merely asserts that the applicant has provided an abundance of both primary and secondary evidence including documents that fall within the regulations at 8 C.F.R. § 245a.2, that meet the criteria regarding credibility, sufficiency and amenability to verification.

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).

Due to the inconsistencies, discrepancies, and lack of credibility and amenability to verification of the documentation provided that have not been adequately explained, the AAO concludes 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 245a.2(d)(5) of the Act.

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