

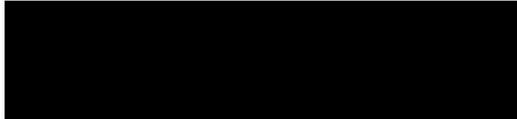
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office MS 2090
Washington, DC 20529-2090



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FILE:

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MSC 03 228 61207

Office: NEW YORK

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OCT 05 2009

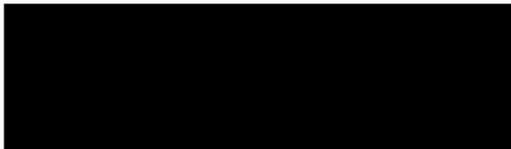
IN RE:

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits 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 remanded for further action, you will be contacted.

Perry Rhew
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. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application, finding that the applicant had not provided credible evidence to establish that he had entered the United States prior to January 1, 1982, and thereafter continuously resided in the United States in an unlawful status for the duration of the requisite period.

On appeal, counsel states that the applicant's statement, friends and relatives' sworn statements detailing the circumstances of their personal knowledge suffice and meet the preponderance standard. The applicant provided an additional affidavit with the appeal for consideration.

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 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).

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.* 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 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, deny the application or petition.

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).

At issue in this proceeding is whether the applicant submitted sufficient credible evidence to meet his burden of establishing that he (1) entered the United States before January 1, 1982, and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1, 1982 and lived in an unlawful status during the requisite period consists of two affidavits of relationship written by friends and other evidence. The AAO will consider all of the evidence relevant to the requisite period to determine the applicant's eligibility.

The USCIS adjudication officer's notes from the applicant's Form I-687 application interview and the applicant's class membership determination form reveal that the applicant claims to have entered the United States without inspection in June, 1981.

The applicant submitted an affidavit from [REDACTED] and [REDACTED] to establish his initial entry and residence in the United States during the requisite period. [REDACTED] states that he met the applicant in late 1981 when he came from Florida to visit a common friend, [REDACTED]. [REDACTED] states that the applicant told him that he had recently come to the United States without a valid visa. [REDACTED] also states that between the years, 1981 to 1988, the applicant lived at [REDACTED]. During this period, the affiant resided at [REDACTED], Elmhurst, New York, and is not attesting to information based on his own personal knowledge. Although [REDACTED] claims that he kept in touch with the applicant, neither he nor the applicant has provided any evidence of their correspondence over the years. The affiant attests to the applicant's good moral character but does not provide any other information about the applicant.

In his letter, [REDACTED] states that he has known the applicant since 1978 in India while he was an apprentice with his brother-in-law, [REDACTED]. Mr. [REDACTED] claims that he met the applicant again in December 1981 when he visited his home in New York for a couple of weeks. [REDACTED] provides no other information about the applicant.

Upon review, the AAO finds that the evidence lacks the detail required to establish its credibility. The affidavit and letter do not include sufficient detailed information about the claimed relationship and the applicant's unlawful entry prior to January 1, 1982 and continuous residency in the United States throughout the requisite period. The witnesses fail to indicate any other details that would lend credence to the claimed acquaintance with the applicant and the applicant's residence in the United States during the requisite period.

The affidavit and letter do not provide concrete information, specific to the applicant and generated by the asserted association with him, which would reflect and corroborate the extent of this association and demonstrate that the witnesses had a sufficient basis for reliable knowledge about the applicant during the time addressed in their statements. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Therefore, the affidavit and letter will be given nominal weight.

An applicant applying for adjustment of status under this part has the burden of proving by a preponderance of evidence that he or she is eligible for adjustment of status under section 245a of the Act. 8 C.F.R. § 245a.2(d)(5). Considering all the evidence of record, the AAO finds that the applicant has not established that he entered the United States prior to January 1, 1982 and resided in the United States for the requisite period. Given the lack of detail in the affidavit and the letter, the applicant has failed to submit sufficient evidence to overcome the director's denial. The evidence calls into question the credibility of the applicant's claim of continuous unlawful residence in the United States throughout the requisite period. The evidence submitted is insufficient to establish the applicant's 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 the requisite period.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and continuously resided in an unlawful status in the United States for the requisite period 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.