

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

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

L2

FILE:

MSC 02 236 61371

Office: NEW YORK

Date:

**APR 06 2010**

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. 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.

*Elizabeth McCormack*

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, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988 as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel reiterates the applicant's claim of residence in this country for the required period and asserts that the applicant had submitted sufficient evidence to demonstrate such claim. Counsel requests a copy of the record of proceedings and indicated a brief would be forthcoming within thirty days of compliance with this request.

The record shows that United States and Citizenship and Immigration Services or USCIS (formerly the Immigration and Naturalization Service or the Service) complied with counsel's request with Control Number NRC2008003658 and mailed a copy of the record to counsel on May 8, 2009. The brief subsequently submitted by counsel has been incorporated into the applicant's appeal.

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. Section 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 periods, is admissible to the United States under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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).

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 to May 4, 1988, the submission of any other relevant document including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v) states that attestations by churches, unions, or other organizations to the applicant's residence by letter must: identify applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where applicant resided during 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 "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. *Id.*

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing his continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Act, on February 18, 1992. Subsequently, the applicant filed his Form I-485 LIFE Act application on May 24, 2002.

In support of his claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted a photocopied rent receipt for \$400.00 that is dated December 2, 1984. However, the probative value of this receipt is minimal because it is handwritten and references only the applicant's name without identifying the location of the premises being rented.

The applicant provided affidavits that are signed by [REDACTED] and [REDACTED]. Although all of these affiants attested to the applicant's residence in the United States for the period in question or a portion thereof, their testimony was general and

vague and lacked sufficient details and verifiable information to corroborate the applicant's residence in this country for the requisite period.

The applicant included a letter of membership containing the letterhead of the United American Muslim Association of New York in Brooklyn, New York that is signed by the "head" of this organization, [REDACTED]. Mr. [REDACTED] stated that the applicant had been a member of this organization since 1981. However, Mr. [REDACTED] failed to establish the origin of the information to which he was attesting and failed to provide the applicant's address of residence during his affiliation with the United American Muslim Association of New York as required under 8 C.F.R. § 245a.2(d)(3)(v).

The applicant submitted an affidavit signed by [REDACTED] who stated that the applicant had been absent from the United States when he traveled to Canada and stayed at his home from February 1, 1988 to March 3, 1988. While [REDACTED] attested to the applicant's absence from this country in 1988, he failed to provide any other testimony relating to the applicant's residence in the United States for the requisite period.

The applicant provided an employment letter containing the letterhead of [REDACTED], in the Bronx, New York that is signed by acting personnel manager, [REDACTED]. [REDACTED] declared that the applicant worked at this company since August 1982 through the date the letter was executed on December 24, 1991. [REDACTED] noted that the applicant was currently a supervisor being paid \$7.25 per hour. However, [REDACTED] failed to provide the applicant's address of residence during his employment with [REDACTED]. [REDACTED] failed to state the applicant's duties before he was a supervisor, and failed to provide relevant information relating to the availability of business records reflecting the applicant's employment as required by 8 C.F.R. § 245a.2(d)(3)(i).

The applicant included a photocopied receipt for a money wire transfer from the National Bank of Pakistan branch in New York, New York dated February 13, 1985 and reflecting the applicant's payment of \$500.00 as a gift to the account of [REDACTED] in Pakistan. However, it must be noted the size and font of the date, the applicant's name, and his address are visibly and significantly different than that size and font utilized in the typewritten notations in the remainder of the receipt. The fact that the typewritten notations in the receipt are different sizes and fonts brings into question the origin and authenticity of the receipt.

The director determined that the applicant failed to submit sufficient evidence demonstrating his residence in the United States in an unlawful status for the requisite period. Therefore, the director concluded that the applicant was ineligible to adjust to permanent residence and denied the Form I-485 LIFE Act application on August 1, 2007.

On appeal, counsel asserts that the applicant has submitted sufficient evidence to support his claim of residence in this country for the requisite period. Counsel declares that the director utilized an improper evidentiary standard to evaluate the applicant's supporting documents. Counsel objects to the director's failure to contact affiants who had provided supporting documents

in order to verify their testimony. However, as has been discussed above, the record is absent supporting documents containing specific and verifiable testimony to substantiate the applicant's residence in this country from prior to January 1, 1982. Even if the director utilized a higher evidentiary standard to adjudicate the instant application, it is harmless error because the AAO conducts a *de novo* review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility and making a determination based upon a preponderance of the evidence as required by the regulations at 8 C.F.R. § 245a.2(d)(5) and 8 C.F.R. § 245a.12(e), as well as the precedent decision reached in *Matter of E-- M--*, 20 I. & N. Dec. 77 (Comm. 1989). Counsel fails to put forth any compelling reason that would warrant the verification of documentation that provides neither extensive nor credible information to corroborate the applicant's claim of residence.

The absence of sufficiently detailed supporting documentation seriously undermines the credibility of the applicant's claim of residence in this country for the requisite period, as well as the credibility of the documents submitted in support of such claim. 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. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he has resided in the United States for the requisite period by a preponderance of the evidence as required under both 8 C.F.R. § 245a.12(e) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's reliance upon documents with minimal or no probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988 as required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis.

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