

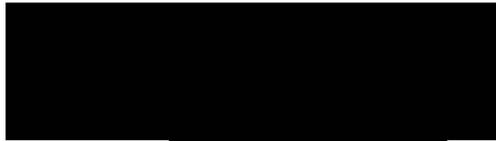
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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U.S. Citizenship  
and Immigration  
Services



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FILE:

MSC 02 236 61528

Office: HOUSTON

Date:

SEP 24 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. 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.

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

The district 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, the applicant reiterates his claim of residence in this country for the required period and asserts that he submitted sufficient evidence in support of such claim. The applicant provides copies of previously submitted documentation in support of the 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 “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 or about August 21, 1990. The record shows that the applicant's former attorney listed "NONE" at part #4 of the Form I-687 application where applicants were asked to list all other names used or known by. At part #33 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant's former attorney listed the applicant's residences as "[REDACTED] in Missouri City, Texas from December 1981 to May 1986, [REDACTED] in Middleton, Ohio from June 1986 to June 1987, and [REDACTED]" in Middleton, Ohio from July 1987 through at least the end of the requisite period on May 4, 1988.

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 numerous documents reflecting his mother's residence in the United States during the period in question. Nevertheless, such documentation cannot be considered as probative to the applicant's claim of residence in this country for the requisite period because these documents only relate to his mother and do not contain any information relating to the applicant. Furthermore, the record contains a variety of school records, transcripts, diplomas, certificates of achievement, Form W-2 Wage and Tax Statements, tax documents, and employment letters that reflect the applicant's residence in the United States after May 4, 1988.

The applicant provided three separate affidavits dated August 21, 1990, May 15, 2002, and July 22, 2003, respectively, all of which are signed by his mother, [REDACTED]. In the affidavit dated August 21, 1990, [REDACTED] indicated that the applicant had resided at those same addresses and corresponding dates during the requisite period as listed at part #33 of the Form I-687 application. In the affidavit dated May 15, 2002, [REDACTED] noted that the applicant had lived with her in the United States throughout the entire period in question beginning in 1981. Ms. [REDACTED] provided six pages of detailed testimony regarding the applicant's, his sister's and her residence and travel in the period from prior to January 1, 1982 to May 4, 1988. In her affidavit dated July 22, 2003, [REDACTED] testified that she used the immunization records of a friend's child to register him under the name [REDACTED] at the Sharpstown Middle School in Houston, Texas in August 1984, but that he subsequently attended the same school using his own name from December 1984 until August 1986. However, [REDACTED] contention that the applicant used the name "[REDACTED]" conflicted with the applicant's testimony at part #4 of the Form

I-687 application where applicants were asked to list all other names used or known by and the applicant's former attorney listed "NONE."

The applicant included an affidavit that is signed by [REDACTED] and corresponding certified translation. Ms. [REDACTED] acknowledged that she is the applicant's aunt and declared that the applicant, his mother, and sister lived in Houston, Texas from 1981 to 1986 and Middleton, Ohio from 1986 through at least the end of period in question on May 4, 1988.

It is noted that [REDACTED] and [REDACTED] have acknowledged that they are respectively, the applicant's mother and applicant's aunt. Consequently, the probative value of the testimony of these affiants is limited as they have admitted that they are members of the applicant's family with a direct interest in the outcome of this proceeding rather than disinterested third party witnesses.

The applicant submitted photocopies of photographs which purport to reflect his residence in the United States on various dates throughout the requisite period. Nevertheless, these photocopied photographs have no probative value as neither the specific locations depicted in these photographs nor the exact dates such photographs were taken are discernible.

The applicant provided a photocopied letter bearing the letterhead of [REDACTED] at [REDACTED] in Houston, Texas and the signature of manager, [REDACTED] Ms. [REDACTED] stated that the applicant, his mother, and sister resided in apartment [REDACTED] from August 10, 1981 to September 15, 1986. However, [REDACTED] testimony that applicant and his family resided in apartment [REDACTED] at [REDACTED] in Houston, Texas directly contradicted both the applicant's testimony at part #33 of the Form I-687 application and his mother's testimony in her affidavit dated August 21, 1990 that they resided at [REDACTED] in Missouri City, Texas from December 1981 to May 1986 and "[REDACTED] in Middleton, Ohio from June 1986 through at least September 15, 1986.

The applicant included two affidavits signed by [REDACTED] as well as individual affidavits signed by [REDACTED] and [REDACTED]. While all of these affiants attested to the applicant's residence in the United States for the period in question, their testimony lacked sufficient details and verifiable information to corroborate the applicant's residence in this country for the requisite period.

The applicant submitted a letter bearing the letterhead of the Houston Independent School District in Houston Texas and the signature of assistant administrator [REDACTED] Ms. [REDACTED] stated that the applicant enrolled in this school district on January 22, 1982 and remained a student with this district until August 2, 1986. Regardless, [REDACTED] failed to state source of her knowledge relating to the applicant's enrollment in the Houston Independent School District from 1982 to 1986.

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 January 30, 2004.

On appeal, counsel reiterates the applicant's claim of residence in this country for the required period and asserts that the applicant submitted sufficient evidence in support of such claim. Counsel's remarks on appeal regarding the sufficiency of evidence the applicant submitted to demonstrate his residence in this country during the period in question have been considered. However, the supporting documents contained in the record do not contain specific and verifiable testimony to substantiate the applicant's claim of residence in the United States for the period in question. In addition, the record contains testimony that did not conform and in some cases conflicted with the applicant's own testimony relating to his claim of residence in this country since prior to January 1, 1982.

Both counsel and the applicant contend that the applicant attended two different schools in the Houston Independent School District, Dow Elementary School and Sharpstown Middle School, from 1982 to 1986, but that Dow Elementary had closed and school records reflecting his attendance within the Houston Independent School District had been lost or destroyed. The parties submit a letter dated July 7, 2003 bearing the letterhead of the Houston Independent School District and the signature of the Manager, Student Records, [REDACTED] Mr. [REDACTED] declares the following in pertinent part:

Per your request, Inactive Student Records personnel have conducted a search of all school district student rosters from the 1980's for [REDACTED] (DOB 09-07-1970). The name of your client does not appear on any roster from that time period under the last name [REDACTED] or the last name [REDACTED]

[REDACTED] statements indicate that a search of relevant records showed no evidence that the applicant attended schools in the Houston Independent School District in 1980's and do not support the parties contention that school records were unavailable because one of the schools the applicant had attended closed or such records had otherwise been lost or destroyed. Although the applicant suggests these school records may be unavailable because his mother registered him under a false name at Sharpstown Middle School, the applicant's mother testified that she initially registered him under the name [REDACTED] at the Sharpstown Middle School in Houston, Texas in August 1984, but that he subsequently attended the same school using his own name from December 1984 until August 1986. Moreover, the claim that the applicant used a false name does not correspond to his prior testimony at part #4 of the Form I-687 application where applicants were asked to list all other names used or known by and the applicant's former attorney listed "NONE."

The absence of sufficiently detailed supporting documentation and the conflicting and contradictory testimony cited above seriously undermine 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 and conflicting nature of testimony contained in the record, 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.