

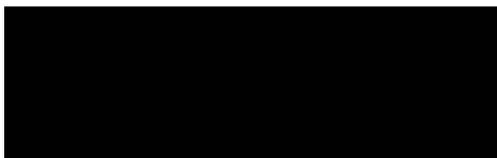
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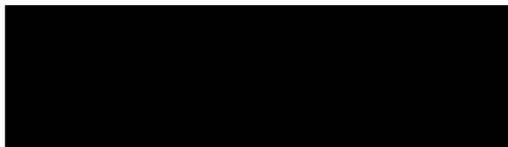
MSC 02 243 68716

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IN RE: Applicant: [Redacted]

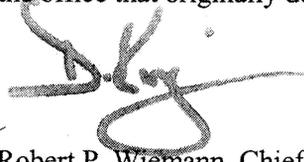
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Denver, Colorado, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant exceeded the forty-five (45) day limit for a single absence from the United States during the requisite period. The director also denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, counsel asserted that the applicant traveled to Morocco on advance parole in 1989. Counsel stated that the applicant was attempting to obtain evidence from his family in Morocco regarding the duration of his visit. Counsel stated that the applicant was unsuccessful in obtaining additional evidence to establish his residence in the United States during the requisite period-as it has been over 20 years. Counsel requested 30 days in which to submit a brief and/or evidence to this office. Subsequently, in a letter dated May 30, 2006, counsel states that there is no new evidence or documentation that the applicant can provide in support of his appeal.

“Continuous residence” is defined in the regulations at 8 C.F.R. § 245a.15(c)(1), as follows:

*Continuous residence.* An alien shall be regarded as having resided continuously in the United States if:

- (1) No single absence from the United States has exceeded *forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed. [Emphasis added.]

The director’s determination that the applicant had been absent from the United States for over 45 days was based on the applicant’s testimony at the time of his LIFE interview. According to the interviewing officer’s notes, the applicant was absent from the United States for approximately two months in 1987.

The applicant, however, indicated on his Form I-687 application and LULAC Class Member Declaration both dated November 14, 1989, that he departed the United States on November 16, 1987 and returned on December 24, 1987; an absence of 39 days. As there is no signed statement by the applicant corroborating the interviewing officer’s notes, the AAO finds that the applicant did not exceed the 45-day limit for a single absence from the United States.

An applicant for permanent resident status 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. 8 C.F.R. § 245a.11(b).

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 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.* 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 regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. See 8 C.F.R. § 245a.2(d)(3)(vi)(L).

On May 19, 2003, the director issued a Request for Additional Evidence, which requested that the applicant submit evidence of his continuous residence since before January 1, 1982 through May 4, 1988 and of his continuous presence from November 6, 1986 through May 4, 1988 in the United States. The applicant was also requested to submit the final court dispositions for all arrests and his birth certificate. Counsel, in response, requested an extension of time in order for the applicant to gather additional documentation. Subsequently, counsel submitted:

1. A criminal history record from the San Francisco Police Department, which indicated that no charges were filed by the district attorney regarding the applicant's arrests on February 28, 1994 for misrepresentation of manufacturer of goods, no peddler permit and false advertising and on December 23, 1994 for no peddler permit and resisting an arrest.
2. An unsigned letter from [REDACTED] who indicated that he met the applicant in April 1988 in New York City.
3. A copy of the applicant's birth certificate.

In his Notice of Intent to Deny dated September 18, 2003, the director noted that the applicant had previously submitted affidavits from two affiants; one from [REDACTED] who indicated that the applicant resided with him subsequent to the requisite period and another from [REDACTED]. It is noted, however, that affidavit from [REDACTED] was not from an affiant, but rather it is a self-serving affidavit presented by the applicant.

Counsel, in response to the notice, submitted an affidavit dated October 17, 2003 from [REDACTED] of [REDACTED] Massachusetts, who indicated that the applicant "used to live with me a long time ago for a few months in same building in 198[REDACTED]."

On appeal, the applicant asserts in part:

However, my first trip to New York was unsuccessful, because of the few people that I could remember from that time, I could not obtain any documentation that they knew me back then. People seemed afraid to want to help me. Also, none of the businesses where I once worked (which were mainly small grocery stores owned by Yemeni people) were closed. I also worked at a few bakeries that also were not in business. One of the bakeries I worked at, Le Petit Pain, was in the World Trade Center. I worked there for about 6 or 7 months in 1987 or 1988.

My second trip to New York occurred by way of Boston, since I also lived in Boston for a few months during the amnesty period. I obtained an affidavit from [REDACTED], indicating that I lived in the same building with [REDACTED], Mass. in 1981. That time I went to the [REDACTED] mosque in Harlem, New York to obtain more documents, but the people in charge now did not know me in the 1980's and could not provide me any additional documents.

The applicant's inability to produce additional evidence of residence for the period in question due to the passage of time has been considered. The AAO, however does not view the documents discussed above as substantive enough to support a finding that the applicant entered and began residing in the United States before January 1, 1982 through May 4, 1988. The letter from [REDACTED] has not probative value or evidentiary weight as it was not signed by the affiant. The applicant indicates on appeal that he resided in [REDACTED] Massachusetts during the requisite period and [REDACTED] attested to applicant's residence in [REDACTED] during 1981. However, the applicant did not claim any residence in Massachusetts on his Form I-687 application. Further, the applicant asserts that he worked at grocery stores and bakeries during the requisite period. This contradicts the applicant's claim on his Form I-687 application to have been self-employed during the requisite period. No explanation has been provided to resolve these contradictions.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

Given the credibility issues arising from the documentation provided by the applicant, along with the reliance of [REDACTED] affidavit, it is determined that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982 and resided in this country in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant 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.