

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

L2

PUBLIC COPY

[Redacted]

FILE:

[Redacted]

Office: NEW YORK

Date: JAN 26 2007

MSC 02 044 60536

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:

[Redacted]

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, New York, New York, and is now before the Administrative Appeals Office 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.

On appeal, counsel states that the applicant submitted evidence of his continuous unlawful residence in the United States since January 1, 1982. The applicant submits additional documentation in support of the appeal.

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. Section 1104(c)(2)(B) of the LIFE Act; 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 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 (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 Citizenship and Immigration Services (CIS) 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

On a form for determining class membership, which he signed under penalty of perjury on November 10, 1992, the applicant stated that he first entered the United States illegally on August 17, 1981. On his Form I-687, Application for Status as a Temporary Resident, which he also signed under penalty of perjury on November 10, 1992 and again on October 24, 1993, the applicant stated that, during the qualifying period, he worked at the Peruvian Car Service in Elmhurst, New York (September 1981 to July 1985) and at The [REDACTED] Corporation in Woodside, New York (July 1985 to May 1981).

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant submitted the following evidence:

1. A September 16, 1991 affidavit from [REDACTED], in which she stated that she had known the applicant since 1981 and that the applicant had been in the United States since that time. Mrs. [REDACTED] did not indicate the circumstances surrounding her initial acquaintance with the applicant, and while she stated that she had been in the United States since 1977, the applicant submitted no evidence to establish that Mrs. [REDACTED] was present in the United States during the qualifying period.
2. A September 16, 1991 affidavit from an affiant whose last name is [REDACTED] but whose first name is illegible. The affiant stated that he or she had known the applicant since 1981 and that the applicant had been in the United States since that time. The affiant did not indicate the circumstances surrounding the initial acquaintance with the applicant, and while the affiant stated that he or she has been in the United States since 1969, the applicant submitted no evidence to establish that the affiant was indeed present in the United States during the qualifying period.
3. An August 30, 1992 sworn statement from [REDACTED] in which he stated that the applicant resided with him in his apartment in Flushing, New York, from August 1981 through September 1985. The applicant submitted no evidence that Mr. [REDACTED] was present in the United States or that either resided at the address indicated during the stated time frame.
4. An August 26, 1991 affidavit from [REDACTED], in which she stated that she met the applicant at a family reunion at her house, and that the applicant had lived in New York since January 1982. We note that Ms. [REDACTED] indicated that she was a student at the time that she signed her application, and the record does not establish the affiant's age at the time that she initially met the applicant. Therefore, it is unclear from the record whether the affiant had an independent memory of meeting the applicant and the date that she may have become acquainted with him.
5. An October 5, 1992 sworn statement from [REDACTED] in which he stated that the applicant was his tenant at [REDACTED] from October 1985 to June 1991. Neither Mr. [REDACTED] nor the applicant provided documentary evidence such as a lease agreement, rental payment receipts, or utility bills, which would corroborate that the applicant lived at the apartment during the time indicated. The applicant also submitted no evidence that Mr. [REDACTED] was the manager or owner of the apartment indicated.
6. A July 13, 1992 letter from Father [REDACTED] of the St. Mary Help of Christians Church in Woodside, New York, in which he stated that he had known the applicant for six years, but that the applicant told him that he arrived in the United States in 1981. Father [REDACTED] did not state that he had independent knowledge of the applicant's presence and residency in the United States prior to 1985 or 1986.
7. An October 22, 1992 sworn statement from [REDACTED], in which he stated that the applicant traveled from New York to "his country" on September 4, 1987. Mr. [REDACTED] did not state the basis of his knowledge for this travel nor did he state his relationship and knowledge of the applicant.

8. An October 2, 1992 sworn statement from [REDACTED], in which he stated that he drove the applicant to Kennedy Airport on September 4, 1987, and that the applicant was absent from the United States for approximately one month.
9. An August 20, 1991 sworn statement from [REDACTED] who stated that she was the owner of [REDACTED] Corporation. Ms. [REDACTED] certified that the applicant worked for the company as a janitor from July 1985 to February 1991. The letter does not indicate the source of the information regarding the applicant's employment or the applicant's address at the time of his employment. 8 C.F.R. § 245a.2(d)(3)(i).
10. A February 25, 1993 "Certificate of Immigration Status," which according to the partial translation provided by the applicant, indicates that the applicant entered Peru on September 4, 1987 from the United States. We note that the translation submitted by the applicant does not comply with the provisions of 8 C.F.R. § 103.2(b)(3), which requires that documents submitted in a foreign language "shall be accompanied by a full English translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English." The translator for the certificate did not certify that the translation was complete and accurate and did not certify that he is competent to translate from Spanish into English. Because the applicant failed to submit a complete translation of the document, the evidence is not probative and will not be accorded any weight in this proceeding. Further, assuming that the certificate met the regulatory requirements, it is evidence only that the applicant entered Peru on a given date. The applicant's unsupported statement to the Peruvian authorities that he was traveling from the United States does not establish his originating destination as fact.

In response to the director's Notice of Intent to Deny dated January 23, 2004, the applicant submitted a September 27, 1992 sworn statement from [REDACTED] who identified herself as the owner of the Peruvian Car Service, and stated that the applicant was employed by the company as a janitor from September 1981 to July 1985. As with her statement dated August 20, 1991, in which she stated that she was the owner of The [REDACTED] Corporation, Ms. [REDACTED] did not indicate the source of the information regarding the applicant's employment or the applicant's address at the time of his employment. 8 C.F.R. § 245a.2(d)(3)(i).

In her decision, the director noted that Ms. [REDACTED] signed both letters verifying the applicant's employment during the qualifying time period, and indicated that she was the owner of the two businesses for which the applicant allegedly worked. The director further noted that the phone number listed for Peruvian Car Service was out of service, and that the phone number listed for The [REDACTED] Corporation belonged to a different business. The director noted that the regulation at 8 C.F.R. § 245a.2(d) requires that documentation submitted with applications must be subject to verification.

On appeal, the applicant submits a notarized "affidavit" from Ms. [REDACTED] in which she states that she was the owner of two business at which the applicant worked between September 1981 to 1991. Ms. [REDACTED] stated that her company Peruvian Car Service was closed in July 1985 following a flood, but that she did not keep any records "of it." It is unclear from her statement whether Ms. [REDACTED] meant that she did not keep any records of her business or of the flood. Nonetheless, the applicant submitted no documentary evidence, such as a business license, business charter, tax returns, or similar documentation to establish that a company called Peruvian Car Service existed at the time indicated. Additionally, as noted previously, Ms. [REDACTED] provided no information upon which she based the dates of the applicant's employment with Peruvian Car Service.

Ms. [REDACTED] stated that after she was forced to close Peruvian Car Service, she opened The New Way Car Corporation in July, a company that she sold in June 1996. The applicant submitted copies of a bill of sale, signed by Ms. [REDACTED] on June 26, 1996 but by no others, reflecting that Ms. [REDACTED] sold a company named The [REDACTED] to Experience 2000 Corporation after the initial sale to Your [REDACTED] Corporation in 1994 fell through. A copy of a partial copy of the 1995 Internal Revenue Publication 292 address to [REDACTED] Corporation was submitted. However, the document does not show the nominal owner of the business and does not offer evidence of the prior existence of the business. The applicant submitted no contemporaneous documentary evidence, such as pay slips, work schedules or tax returns, to corroborate his employment at the company.

Given the absence of any contemporaneous documentation and his unsubstantiated work history, it is concluded that the applicant has failed to establish continuous residence in the U.S. for the required period.

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