

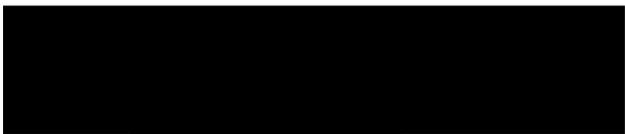
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U.S. Citizenship  
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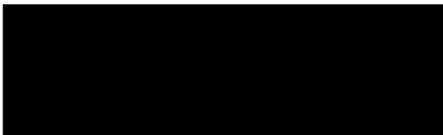
Office: CHICAGO SERVICE CENTER

Date: SEP 19 2007

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. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

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 Director, Chicago Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director concluded the applicant failed to submit sufficient evidence to establish by a preponderance of the evidence that he unlawfully resided in the United States for the duration of the statutory period. The director's conclusion served as the basis for his denial.

The district director concluded that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act, and therefore, denied the application.

On appeal, counsel submits evidence showing the applicant's timely response to the director's previously issued notice of intent to deny and asserts that the denial was erroneous. While further review of the matter shows that the director erroneously noted that the applicant failed to respond to the notice of intent, the AAO concurs in the director's ultimate conclusion with regard to the applicant's failure to provide sufficient evidence to establish his continuous U.S. residence during the statutorily relevant time period. The AAO will now provide a comprehensive discussion, taking into consideration all evidence submitted in support of the applicant's Form I-485 LIFE application.

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 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 no" 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.

In the present matter, the director determined that the documentation initially submitted in support of the applicant's Form I-485 LIFE application was insufficient and, therefore, issued a notice of intent to deny dated July 14, 2003, indicating that additional evidence was necessary in order to establish continuous residence.

In response to the director's request, the applicant provided the following:

1. Photocopied envelopes addressed to the applicant and date stamped December 15, 1981, June 21, 1982, November 15, 1982, June 8, 1983, December 5, 1983, January 17, 1984, October 11, 1985, and January 13, 1987.
2. A photocopy of an assignment of a lease wherein the applicant is named as the assignee and [REDACTED] is named as the tenant/assignor. The sublease was for a one-room residence at [REDACTED] floor and was for a one-year lease term from April 1, 1983 to March 31, 1984. The document is signed by the claimed owner of the subleased premises showing the owner's consent to the assignment of the lease.
3. A photocopy of an assignment of a lease wherein the applicant is named as the assignee and [REDACTED] named as the tenant/assignor. The sublease was for a one-year term from May 1, 1987 to April 30, 1988 at [REDACTED]. It is noted that while the assignment form is identical to the one discussed in No. 5 above, this document, unlike the sublease in No. 5 above, lacks the signature of the owner consenting to the sublease of the named premises. As such, the validity of the document is questionable at best.
4. An undated chain letter without an addressee. While counsel provides an exhibit list suggesting that the letter is dated 1987, the letter merely references to an event that purportedly took place in September 1987 and is unrelated to the applicant. The actual date of the letter is not clear.
5. A matchbox for [REDACTED] which states that the restaurant opened in the fall of 1986. There is no explanation as to how this matchbox addresses the subject of the applicant's residence in the United States during the relevant statutory period.
6. A matchbox for the 1987 opening of [REDACTED]. Again, there is no explanation as to how this matchbox addresses the subject of the applicant's residence in the United States during the relevant statutory period.
7. A photocopy of a blank money order containing only the amount, but no other information regarding the payor or the payee of the said funds. As such, the AAO is unclear as to how this document pertains to the beneficiary's residence in the United States.
8. A warranty from [REDACTED] dated September 3, 1988. There is no evidence that this receipt in any way pertains to the applicant.
9. An affidavit from [REDACTED] signed on August 3, 2003. [REDACTED] stated that she first met the applicant in September 1982 during his employment at [REDACTED]. The affiant claimed to

have been a patron of [REDACTED] during the applicant's employment and became friendly with the applicant when he returned money lost by the affiant during a visit to the fast food establishment. Although the affiant claimed that the applicant became a friend of the family, she provided no further verifiable information about the applicant's employment or residence since her initial encounter with the applicant in 1982.

10. An affidavit from [REDACTED] dated August 2, 2003. The affiant stated that he met the applicant in 1984 through a friend who used to be the applicant's roommate. Although the affiant discussed the applicant's marriage in 1995 and vouched for the applicant's good character, he provided no information that can be verified with other evidence and information submitted by the applicant.
11. An affidavit from [REDACTED] dated July 28, 2003 in which the affiant stated that he has known the applicant since October 1981 and claims to have met the applicant through a friend. The affiant recalled that he saw the applicant once or twice per week and stated that the applicant worked in a fast food restaurant when he first came to know him. The affiant further stated that the applicant moved to [REDACTED] in 1983. The affiant also stated that the applicant moved in with him when the affiant moved to [REDACTED] in May 1984. The affiant claimed that the applicant resided at that address for approximately four years.

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).

After a thorough review of the documentation submitted, the AAO concludes that various deficiencies exist. First, the postcard, the jewelry store invoice, and the matchbox are in no way indicative of the applicant's residence in the United States during the dates on any of the three respective documents. Second, while the affidavit from [REDACTED] established her initial encounter with the applicant, she provided no further information that can be verified with information provided by the applicant regarding his residence in the United States prior or subsequent to their initial meeting.

Third, while the applicant provided a photocopied envelope date stamped January 1984, which was addressed to the applicant at [REDACTED] according to information provided in the Form I-687 (which the AAO is simultaneously reviewing with the present Form I-485 application) the applicant did not begin residing at that address until May 1984, which is four months after the post date on the envelope. It is noted that the lease assignment discussed in No. 2 above also indicates that the applicant was not residing at [REDACTED] in January 1984. This inconsistency causes the AAO to question the credibility and reliability of the documentation pertaining to the applicant's residence during a portion of the relevant time period. Specifically, if the envelope in question is authentic, then the information provided by the applicant on his Form I-687 application for temporary resident status as well as the validity of the sublease (No. 2 above) comes into question. Conversely, if the sublease is valid and the information provided by the applicant in the Form I-687 is truthful, the AAO must nevertheless question the applicant's credibility, as the authenticity of the envelope containing the incorrect mailing address then comes into question. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to

explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In the present matter, the inconsistency discussed herein has neither been acknowledged nor rectified.

Lastly, contrary to the claim of the affiant in No. 11 above, who stated that the applicant maintained his residence at [REDACTED] until 1988, the applicant indicated in his Form I-687 application that he maintained his residence at that address until 1989.

Thus, while the basis for the director's denial was erroneous, the supporting evidence in the present matter is insufficient to establish the applicant's continuous residence in the United States during the relevant time period. Several affidavits provide little or no verifiable information regarding the applicant's residence, while others, as specifically discussed above, are not entirely consistent either with information provided by the applicant in the Form I-1687 or with other documentation submitted by the applicant to support his claim.

Given the above described deficiencies and the applicant's reliance upon affidavits with minimal probative value, it is concluded that the applicant 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 by section 1104(c)(2)(B) of the LIFE Act and by *Matter of E-M-*, 20 I&N Dec. 77. Therefore, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.