

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, D.C. 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

[Redacted]

L2

FILE:

[Redacted]

Office: NEW YORK Date:

JUN 17 2008

MSC 03 177 60506

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. 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.

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 (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 from before January 1, 1982, through May 4, 1988.

On appeal, counsel asserts that the director's decision is in error as the affiant, [REDACTED], clearly attests to the applicant's arrival in the United States in December 1981 as he met the applicant at his residence. Counsel asserts that it appears the director did not consider the affidavits from [REDACTED] and [REDACTED], who had personal knowledge that the applicant resided in the United States since 1981.

The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. Section 1104(c)(2)(B)(i) 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 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).

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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period. Here, the applicant has failed to meet this burden.

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

- An affidavit from [REDACTED] of Rego Park, New York, who indicated he has known the applicant since 1986, and attested to the applicant's Brooklyn, New York residences at [REDACTED], and [REDACTED] and to the applicant's 1987 departure to Canada.
- An affidavit from [REDACTED] of Toronto, Canada, who attested to the applicant's visit from September 10, 1987 to September 30, 1987.
- A letter dated January 10, 2004, from [REDACTED], secretary of Masjid-Al-Aman, Inc., in Brooklyn, New York, who indicated that the applicant "contributed fully since the past 1986 till now in the development of this Mosque."
- An affidavit from [REDACTED] of New York, New York, who indicated that he met the applicant in 1983, and has maintained a friendship since that time.
- An affidavit from [REDACTED] of Brooklyn, New York, who indicated that he has been acquainted with the applicant since 1986 and attested to the applicant's residences in Brooklyn, New York.
- An affidavit from [REDACTED] of Brooklyn, New York, who indicated that he has been acquainted with the applicant since 1983 and has maintained a friendship since that time.
- A receipt dated March 18, 1986, from M&B Appliances, Inc.
- An affidavit from [REDACTED] of Brooklyn, New York, who attested to the applicant's Brooklyn, New York residences at [REDACTED] from December 1981 to August 1987, and at [REDACTED] since September 1987. The affiant asserted that during this period he and the applicant spoke once a month and the applicant would visit his residence once a month.
- Affidavits from Ahmedullah and [REDACTED], who attested to the applicant's absence from September 10, 1987, to September 30, 1987.
- A letter dated February 24, 1990, from [REDACTED] president and [REDACTED], secretary of Masjid Arafate & Muslim Center, Inc., in Brooklyn, New York, who indicated that the applicant "has a great contribution towards the development of this Mosque since 1984."
- A letter dated September 22, 1990, from Almaya Cosmetics, Inc., in New York, New York, which attested to the applicant's employment since October 1987.

The director issued a Notice of Intent to Deny dated May 28, 2006, which advised the applicant that the affidavits submitted only attested to his residence in the United States since 1983 and 1986, and that the affidavits were not corroborated by other evidence in the record, "nor are they credible."

In response, the applicant submitted copies of affidavits that were previously presented along with:

- An affidavit from [REDACTED] of Elmhurst, New York, who indicated that the applicant entered the United States in December 1981 and that the applicant informed him of his arrival over the telephone. The affiant asserted that he visited the applicant at [REDACTED] Brooklyn, New York in December 1981. **The affiant indicated that he has maintained a friendship with the applicant since that time.**
- An affidavit from [REDACTED] of Brooklyn, New York, who indicated that he met the applicant in December 1981 at the applicant's place of residence, [REDACTED] Brooklyn, New York. **The affiant asserted, "we meet each other in all our personal and community festivals."**
- An affidavit from [REDACTED] of Richmond Hill, New York, who indicated he has been acquainted with the applicant since January 1982. The affiant asserted that he first met the applicant at the applicant's place of employment, "Barger Haven."

The AAO does not view the documents discussed above as substantive enough to support a finding that the applicant continuously resided in the United States since before January 1, 1982, through May 4, 1988, as he has presented contradictory documents, which undermines his credibility. Specifically:

1. The letter from [REDACTED] does not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, the affiant does not explain the origin of the information to which he attests. Further, the applicant did not list any affiliation with this religious organization during the requisite period on his Form I-687 application.
2. The letter from [REDACTED] and [REDACTED] also does not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, the affiants do not explain the origin of the information to which they attests.
3. [REDACTED] indicated that he has maintained a friendship with the applicant since 1983, but provides no place of residence for the applicant during the period in question, and no details regarding the nature or origin of his relationship with the applicant or the basis for his continuing awareness of the applicant's residence.
4. **The affidavits from [REDACTED] and [REDACTED] have little evidentiary weight or probative value as the affiants failed to provide a telephone number or address and, therefore, the affidavits are not amenable to verification by the Citizenship and Immigration Services.**
5. The letter from Almaya Cosmetics, Inc., failed to include the applicant's address at the time of employment, his duties with the company, 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 as required under 8 C.F.R. § 245a.2(d)(3)(i).

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).

The evaluation of the applicant's claim is a factor on both the quality and quantity of the evidence provided. While affidavits in certain cases can effectively meet the preponderance of evidence standard, the affidavits submitted by the applicant are lacking in probative value and evidentiary weight and, therefore, 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.