



U.S. Citizenship
and Immigration
Services

PUBLIC COPY
**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

L2

[REDACTED]

FILE: [REDACTED] Office: NEW YORK
MSC 02 004 61699

Date: **MAY 08 2008**

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 on appeal. The appeal will be dismissed.

The director denied the application because the applicant had not demonstrated that he had entered the United States prior to January 1, 1982, and resided continuously in an unlawful status through May 4, 1988.

On appeal, counsel challenges the director's conclusions that formed the basis of the denial. The applicant submits no other 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 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 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).

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.

In a March 15, 1990, affidavit, the applicant stated that he first arrived in the United States on January 10, 1980. The applicant did not state the circumstances of his entry into the United States at that time. On his Form I-687, Application for Status as a Temporary Resident, which he signed under penalty of perjury on February 28, 1990, the applicant indicated that his only absence from the United States was for a eight-day period in October 1987 when he visited Mexico on vacation. The applicant stated that he lived at [REDACTED] from April 1981 to March 1987, and at [REDACTED] Illinois from April 1987 to October 1989. The applicant also stated that he worked at [REDACTED] and Grocers on [REDACTED] in Chicago from March 1981 to August 1987, and at the [REDACTED] Restaurant in Chicago from September 1987 to the date of his Form I-687 application. During his January 19, 2006, LIFE Act adjustment interview, the applicant stated that he first entered the United States in March 1981 using someone else's passport. He stated that he left the United States for a visit in Mexico on October 10, 1987, and reentered on October 18, 1987, without inspection.

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 November 27, 1981, Habib Bank Limited money transfer receipt showing the applicant as the remitter, with an address at [REDACTED] in Chicago.
2. An August 6, 2001, notarized statement from [REDACTED] in which she stated that she had known the applicant since 1981, and that she met him in Chicago when he worked at a hotel restaurant. This statement is inconsistent with that of the applicant on his Form I-687 application, in which he stated that he worked at a Meat and Grocer from March 1981 to August 1987, and at the [REDACTED] Restaurant from September 1987.
3. A February 28, 1990, notarized statement signed by [REDACTED] who identified himself as the manager of [REDACTED] certified that the applicant worked for the company from March 1981 to August 1987. The letter does not meet the requirements of 8 C.F.R. § 245a.2(d)(3)(i) in that it fails to provide the applicant's address at the time of his employment; fails to state the applicant's duties, and fails to state whether the information was taken from company records. Accordingly, it has no probative value in this proceeding.
4. A copy of an envelope addressed to the applicant at [REDACTED] in Chicago, indicating that [REDACTED] in Centerville, Massachusetts sent it. The envelope indicated that it was mailed from zip code [REDACTED] on June 11, 1981.
5. Lease agreements indicating that they were for an apartment at [REDACTED] in Chicago, and dated in March of 1981, 1982, 1983, 1984, 1985 and 1986. Each of the agreements indicates the applicant and [REDACTED] as the tenants and [REDACTED] as the lessor.
6. A February 28, 1990, notarized statement signed by [REDACTED] who identified himself as the manager of [REDACTED] Restaurant. [REDACTED] certified that the applicant worked for the company from April 1987. The letter does not meet the requirements of 8 C.F.R. § 245a.2(d)(3)(i) in that it fails to provide the applicant's address at the time of his employment; fails to state the applicant's duties, and fails to state whether the information was taken from company records. Accordingly, it has no probative value in this proceeding.

7. A copy of a February 28, 1988, letter from the Hamilton Clinic, signed by [REDACTED] stating that the applicant came to the clinic complaining of chest pains. The letter did not state when the applicant was treated at the clinic.
8. An April 15, 1986, contract from [REDACTED] Construction Company, for a chemical cleaning and "repointing." The job address is listed as [REDACTED] in Chicago and the applicant is shown as the individual accepting the contract. The contract indicates that the job consisted of chiseling out the cracks of a house, chemical cleaning and pressure washing the house, repointing the four sides of the house and the porch, and caulking of the windows. The terms of the contract, however, are inconsistent with the existence of the lease agreements submitted by the applicant, which indicated that he rented an apartment at this address.
9. Lease agreements indicating that they were for an apartment at [REDACTED] Illinois, and dated in March of 1987 and 1988. Each of the agreements indicates the applicant and Sana Ullah as the tenants and [REDACTED] as the lessor.
10. A copy of an April 21, 1988, sales receipt from the [REDACTED] an electronic store in New York, showing the applicant as the purchaser.

The record reflects that, as part of its attempts to verify the applicant's information submitted in connection with the applicant's Form I-687 application, the district office, in 1990, contacted the apartment complexes on the applicant's leases. According to the examiner's notes, the manager of the complexes denied that [REDACTED] worked at the complexes. Additionally, the examiner was unable to verify that [REDACTED] was a doctor at the Hamilton Clinic or that [REDACTED] worked at [REDACTED]. The examiner also confirmed with the New York telephone operator that the [REDACTED] Limited did not exist at the number and address listed on the money order transfer. Additionally, [REDACTED] was not known at the phone number listed on her statement.

In her March 10, 2006, Notice of Intent to Deny, the director informed the applicant of the discrepancies in his documentation and other inconsistencies in the record. The applicant was advised he had 30 days in which to submit additional evidence. In response, counsel challenged the director's findings, asserting that the applicant was not given a copy of the district's investigation so that he "could have his fair opportunity to offer a rebuttal." Counsel also states that the director failed to consider the lapse of time in making the inquiries, asserting that businesses may have moved and numbers may have changed. Counsel also asserted that one possible explanation for the examiner's inability to verify the applicant's residency at the apartment complex on West Ainslie is that the manager was not employed until after [REDACTED] had left and that the applicant was the first tenant of the building. Nonetheless, the applicant submitted no additional contact information or other information that would allow CIS to verify the information he provided.

Counsel repeats his assertions on appeal, again without providing any additional documentation to assist CIS in verifying the applicant's information. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Information provided by the applicant must be amenable to verification. 8 C.F.R. § 245a.12(e).

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). It is highly suspect that most of the applicant's supporting documentation is signed by [REDACTED] including both of the applicant's employment letters and all of his leases, although they were allegedly for different addresses. The applicant submitted no competent objective evidence to explain or justify the discrepancies in his evidence. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish by a preponderance of the evidence that he continuously resided in the United States in an unlawful status during the qualified period.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, he is ineligible for permanent resident status under Section 1104 of the LIFE Act.

The record reflects that on July 11, 2005, the applicant filed a Form I-687 application pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004, (CSS/Newman Settlement Agreements). The record does not reflect that the director has issued a final decision regarding that application, and it is not at issue in this appeal.

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