



U.S. Citizenship  
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[REDACTED]

FILE:

[REDACTED]

Office: NEW YORK

Date: NOV 19 2008

consolidated herein]  
MSC 02 183 64084

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 New York District Office. 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.

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the director in New York City. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that he entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status through May 4, 1988.

On appeal counsel asserts that the director did not give proper weight to the documentation submitted by the applicant, which establishes his continuous residence in the United States during the requisite period for LIFE legalization.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. *See* section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

“Continuous unlawful residence” is defined at 8 C.F.R. § 245a.15(c)(1), as follows: “An alien shall be regarded as having resided continuously in the United States if *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.” (Emphases added.)

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 its amenability to verification. *See* 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 applicant, a native of Bolivia who claims to have resided in the United States since August 1980, filed his application for permanent resident status under the LIFE Act (Form I-485) on April 1, 2002. At that time the record included the following evidence of the applicant’s residence and physical presence in the United States during the years 1980-1988, which had been filed along with a Form I-687 (application for temporary resident status) and a LULAC Class Member Declaration in June 1992:

Affidavits by [REDACTED] of Woodside, New York (undated), [REDACTED] of Forrest Hill, New York (September 1, 1990), and [REDACTED] of Corona, New York (June 6, 1992), who claim to have known the applicant since 1980, 1981, and 1983, respectively, and to have worked with him in construction or hired him to do construction work or painting in their homes. According to the affiants, the applicant resided at [REDACTED] New York, from August 1980 to September 1985, and at [REDACTED] New York, from September 1985 to April 1989.

- An affidavit by [REDACTED] a resident of Maspeth, New York (October 24, 1990), stating that the applicant resided with him at [REDACTED] in Maspeth from August 1980 to September 1985.

An affidavit by [REDACTED] a resident of Jackson Heights, New York (November 23, 1989), stating that the applicant resided with him at [REDACTED] Heights from September 1985 to April 1989.

A statement by [REDACTED] on the letterhead of the Church of Saint Leo in Corona, New York (November 6, 1989), certifying that the applicant had attended services regularly at the church since August 1980.

- An affidavit by [REDACTED] on the letterhead of Carlee General Construction Inc. in Corona, Queens, New York (June 20, 1992), stating that the applicant worked in his company from August 20, 1980 until February 1984 in the painting department, five days a week.
- An affidavit by [REDACTED] on the letterhead of [REDACTED] Painting Contractor in Richmond Hill, New York (June 20, 1992), stating that the applicant worked in his company from May 30, 1984 until September 1987 in the painting department.
- A statement by [REDACTED] on the letterhead of [REDACTED] Jewelry of New York in Jackson Heights (undated), certifying that the applicant had been working at her company since October 27, 1987.
- A statement by [REDACTED], a physician practicing in Brooklyn, New York (February 11, 1990), indicating he examined and treated the applicant in his office for earaches and headaches on January 25, 1983 – diagnosing him with “viral syndrome and right otitis media” and prescribing a treatment of “antibiotics, rest and analgesics” – and that the applicant had follow-up visits on February 5, 1983, October 24, 1983, May 9, 1984, and June 5, 1985.
- A photocopied airline ticket issued to the applicant on August 17, 1987 for a flight on Eastern Airlines from New York (La Guardia Airport) via Miami to La Paz, Bolivia, on September 5, 1987.
- A photocopy of an old passport showing that the applicant was issued a B-1/B-2 visa in La Paz, Bolivia, on October 9, 1987, valid for three months, and entered the United States with that visa on October 21, 1987.

When he filed his Form I-485 in 2002 the applicant submitted the following additional documentation:

- Another affidavit by [REDACTED] of Corona, New York (February 25, 2002), stating that she met the applicant at a family reunion of her neighbor’s in 1981 (in 1992 she stated that she met the applicant in 1983), and that she remembers the applicant was discouraged when he “was unable to apply during the Amnesty 1981.”
- An affidavit by [REDACTED] of East Elmhurst, New York (February 25, 2002), stating that she met the applicant at a picnic in Flushing Meadow Park in 1981, that she has been friends with the applicant and his wife, that they have visited one another’s homes and participated in summer outings together, that the

applicant has done painting jobs for mutual acquaintances, and that she remembers the applicant was discouraged when he “was unable to apply during the Amnesty in 1981.”

On July 7, 2007 the director issued a Notice of Intent to Deny (NOID), indicating that the evidence of record was insufficient to establish the applicant’s continuous residence in the United States during the requisite period for LIFE legalization. The director granted the applicant 30 days to submit additional evidence.

In response to the NOID counsel referenced some documentation already in the record, submitted copies of a map and an ownership deed of the property in which the applicant claims to have rented an apartment from 1980 to 1985, and contended that the entirety of the evidence established the applicant’s continuous residence in the United States during the requisite period for LIFE legalization.

On September 23, 2007 the director issued a Notice of Decision denying the application. The director indicated that the additional documentation submitted in response to the NOID did not overcome the grounds for denial discussed therein, and failed to establish that the applicant qualified for adjustment of status under the LIFE Act.

On appeal counsel asserts that the applicant’s status as a LULAC class member and the documentation he has submitted over the years should be viewed as sufficient, under the preponderance of the evidence standard applicable in this proceeding, to establish his unlawful entry into the United States before January 1, 1982 and continuous unlawful residence in the United States through May 4, 1988, as required for LIFE legalization.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered the United States unlawfully before January 1, 1982, and resided in the United States in continuous unlawful status through May 4, 1988. The AAO determines that he has not.

The only contemporary documents from the 1980s that show the applicant to have been present in the United States during the requisite time period for LIFE legalization are the photocopied airline ticket issued to the applicant in August 1987 for travel from New York to Bolivia and the photocopied passport pages with the stamp recording the applicant’s return to the United States in October 1987. While this documentation represents persuasive evidence of the applicant’s

presence in the United States in August and September 1987, it does not demonstrate that the applicant had an established residence in the United States at that time. For someone claiming to have lived and worked in the United States since August 1980, it is noteworthy that the applicant is unable to produce any primary or secondary evidence of his residence, or even his presence, in the United States during the following seven years up to August 1987.

The affidavits by [REDACTED] and [REDACTED] – ranging in time from 1989 to 2002 – who claim to have lived with, worked with, hired on a private basis, or socialized with the applicant during the 1980s, all have minimalist or fill-in-the-blank formats, some with identical language, and limited input from the affiants. Considering how long they claim to have known the applicant, the affiants provide few details about how they met him and the nature and extent of their interaction with the applicant over the years. The affidavits are all remarkably thin on substance, and provide almost no information about the applicant’s life in the United States during the 1980s. Finally, the affidavits are not supported by any documentary evidence – such as photographs, letters, and the like – demonstrating the applicant’s relationship with any of the affiants in New York during the 1980s. For the reasons discussed above, the AAO determines that the foregoing affidavits have limited probative value. They are not persuasive evidence of the applicant’s continuous residence in the United States from before January 1, 1982 through May 4, 1988.

As for the affidavits/letters from [REDACTED] who claim to have employed the applicant during the 1980s, none comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because they did not provide the applicant’s address during the periods of employment, did not state the applicant’s duties (aside from the vague reference in the [REDACTED] affidavits that the applicant worked in the painting department), did not declare whether the information was taken from company records, and did not indicate whether such records are available for review. Furthermore, the applicant has not submitted any earnings statements or tax records to demonstrate that he was actually employed by any of the companies. The AAO determines that the employment affidavits/letters have limited probative value. They are not persuasive evidence of the applicant’s continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The statement by [REDACTED] in 1989 that the applicant had attended services regularly at the Church of Saint Leo since August 1980 does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(v), which specifies that attestations by religious and related organizations (A) identify the applicant by name, (B) be signed by an official (whose title is shown), (C) show inclusive dates of membership, (D) state the address where the applicant resided during the membership period, (E) include the organization seal impressed on the letter or the letterhead of the organization, (F) establish how the author knows the applicant, and (G) establish the origin of the information about the applicant. In his attestation [REDACTED] did not indicate where the applicant lived at any time since 1980, did not indicate how he knew the applicant, and indicated that his information about the applicant was based on “witnesses” without identifying those individuals or the origin of their information. Since the statement by

██████████ does not comply with sub-parts (D), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), the AAO concludes that it has little probative value. It is not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The statement by ██████████ in 1990 that he treated the applicant in his office on several occasions between January 1983 and June 1985 did not identify any address for the applicant during that time period, or any other time during the 1980s. The letter is not accompanied by any medical records confirming the dates of the applicant's office visits, or his address at those times. Even if the information provided by ██████████ is accepted as good evidence of the applicant's physical presence in the United States on the dates indicated, the AAO is not persuaded that a series of office visits in Brooklyn, New York, from early 1983 to mid-1985 establishes the applicant's continuous residence in the United States during that time period, much less over the much longer time period – before January 1, 1982 through May 4, 1988 – required for legalization under the LIFE Act.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that he entered the United States before January 1, 1982, and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act. Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

The appeal will be dismissed, and the application denied.

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