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U.S. Department of Homeland Security  
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MAIL STOP 2090



**U.S. Citizenship  
and Immigration  
Services**

**PUBLIC COPY**

L2

[REDACTED]

FILE:

[REDACTED]

Office: PHILADELPHIA

Date: **NOV 26 2008**

MSC 02 247 60638

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.

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, Philadelphia, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to demonstrate 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.

On appeal, the applicant, through counsel, asserts that he did respond timely to the Notice of Intent to Deny with additional evidence in support of his claim. Counsel contends that the applicant has provided credible, documentary evidence of his continuous, unlawful residence in the United States since 1981. He requests that the director's decision be overturned and the applicant's applicant for adjustment of status be granted.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – 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. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

An applicant for permanent resident status under section 1104 of the LIFE Act 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 through May 4, 1988. See § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant 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 section 1104 of the LIFE Act. 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.* at 80. 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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant’s own testimony. 8 C.F.R. § 245a.12(f).

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet the burden of establishing, by a preponderance of the evidence, that the applicant’s claim of continuous unlawful residence in the United States during the requisite period is probably true. Upon an examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has failed to meet this burden.

In support of the applicant’s claim of continuous residence, the record contains the following evidence relevant to the requisite period:

1. A declaration from [REDACTED] who stated that she met the applicant in 1982 in New York City. She stated that the applicant was a friend of her brother. She also stated that her brother met the applicant in 1981 when the applicant was searching for an apartment and he shared his apartment with the applicant at [REDACTED]. The declarant has no first-hand knowledge of the applicant’s entry or presence in the United States in 1981. She failed to provide details regarding her claimed friendship with the applicant or the duration of his residence with her brother. Lacking relevant details, this declaration has minimal probative value.
2. An affidavit from [REDACTED] who stated that he met the applicant in 1981 at the Mosque in Harlem during religious services, he saw the applicant at congregational prayer services each Friday, then shortly thereafter he lost contact with the applicant. He stated that he met the applicant again in 1989. The affiant has failed to provide any information that would indicate personal knowledge of the applicant’s entry into the United States or place of residence or the circumstances of his residence in 1981. The affiant admitted he had no knowledge of the applicant’s residence for the majority of the requisite period. This affidavit has minimal probative value.

3. An affidavit from [REDACTED] who stated that the applicant has resided in the United States from December 1981 to December 1988 at [REDACTED] in New York. The affiant failed to provide details regarding his claimed friendship with the applicant or to provide any information that would indicate personal knowledge of the applicant's 1981 entry into the United States, his places of residence or the circumstances of his residence over the years of his claimed relationship. Although he claims to have known the applicant since 1981, he failed to note how or where he met him. Lacking relevant details, this affidavit has minimal probative value.
4. An affidavit from [REDACTED] who stated that the applicant has resided in the United States at [REDACTED] in New York from October 1985 to December 1988. He also stated that they met at a party in Manhattan. The affiant failed to provide details regarding his claimed friendship with the applicant or to provide any information that would indicate personal knowledge of the applicant's places of residence or the circumstances of his residence over the years of his claimed relationship. Lacking relevant details, this affidavit has minimal probative value.
5. Two postmarked envelopes, dated in 1983 and 1985, addressed to the applicant at [REDACTED]. The addresses are consistent with the applicant's mailing address at this time period. While it is noted that one postmarked envelope in 1983 and 1985 does not establish continuous residence, it will be given some weight as evidence of the applicant's residence in 1983 and 1985.
6. A declaration from [REDACTED] who stated that the applicant resided at the Clinton Hotel, [REDACTED], from June 1981 until he went to Canada in July 1987. He stated that upon the applicant's return, he resided at the Hotel until December 1988. He stated that he paid \$50.00 per week. The record also includes a receipt, dated June 17, 1987, from the applicant at [REDACTED] in New York for \$50.00. While this declaration lacks supporting documents, such as rent agreement, household bills, additional rent receipts from 1981 through 1986, it will be given some weight as evidence of the applicant's residence.
7. Two affidavits from [REDACTED] and [REDACTED] who stated that the applicant travelled to Quebec, Canada for 15 days on July 5, 1987, and returned on July 20, 1987. While both affiants testified to the applicant's absence in 1987, neither affiant stated that the applicant entered the United States prior to January 1, 1982, or continuously resided in the United States during the requisite period. These affidavits provide minimal probative value.
8. A declaration from [REDACTED], Public Information of Masjid Malcolm Shabazz, who stated that the applicant is a member of the Muslim Community, has been in the United States since June 1981, and attends prayer services at the Masjid. The declarant failed to state the address where the applicant resided during membership period and establish the origin of the information being attested to as required under the regulation at 8 C.F.R. § 245a.2(d)(3)(v). The record also indicates that the information could not be

verified. Therefore, this declaration cannot be accorded any weight as evidence of the applicant's residence during the requisite period.

9. A declaration from [REDACTED], manager at [REDACTED] Auto Repairs, who stated that the applicant worked for the company from June 1981 to October 1988. The declarant failed to state provide the applicant's address at the time of employment, 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 as required under the regulation at 8 C.F.R. § 245a.2(d)(3)(i). Lacking relevant details, this declaration can be accorded only minimal weight as evidence of residence during the requisite period.

For the reasons noted above, the documents submitted in support of the applicant's claim have been found to lack credibility or to have minimal probative value as evidence of the applicant's residence and presence in the United States for the requisite period. The AAO finds that, upon an examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the applicant has not shown by a preponderance of the evidence that he resided in the United States for the requisite period.

Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the lack of credible supporting documentation, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and maintained continuous, unlawful residence from such date through May 4, 1988, as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, 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.