

identifying data deleted to
prevent identity unauthorized
invention of personal privacy

PUBLIC COPY



U.S. Citizenship
and Immigration
Services

L2



FILE: [Redacted]
MSC 02 159 63363

Office: NEW YORK

Date: OCT 02 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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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.

bert 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, New York, 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, counsel asserts that evidence was submitted at the applicant's interview and in response to the Notice of Intent to Deny. Counsel asserts that at least three affidavits were submitted in support of the applicant's claim.

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 or 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.

The applicant has provided the following evidence relating to the requisite period:

1. Three declarations regarding the applicant’s residence during the requisite period. These are from [REDACTED] and [REDACTED]. In an affidavit, dated April 30, 2007, [REDACTED] stated that she has been a naturalized citizen of the United States since 1977. She also stated that she has known the applicant since 1983. In an affidavit, dated April 29, 2007, [REDACTED] stated that he has known the applicant since 1986. He also stated that they first met at South Street Seaport to celebrate [REDACTED]. In an affidavit, dated April 28, 2007, [REDACTED] stated that he has been a citizen of the United States since 1980. He stated that he has known the applicant since 1981 when the applicant would visit his shop at [REDACTED] in Houston, Texas. This affidavit affirms his previous affidavit, dated January 28, 2004. All of the affiants stated that they met the applicant on family and other religious gatherings. The affiants failed to provide details regarding their claimed friendship with the applicant or to provide any information that would indicate personal knowledge of his places of residence or the circumstances of his residence over the prior years of their claimed relationships. Although [REDACTED] claimed to have known the applicant since 1983, she failed to note how or where she first met the applicant. Mr. [REDACTED] failed to provide any information that would indicate his personal knowledge of the applicant’s 1981 entry into the United States. Lacking relevant details, these affidavits have minimal probative value.

2. A declaration, dated May 5, 2007, from [REDACTED], Priest at The Sikh Cultural Society, Inc. The declarant stated that the applicant has come to his congregation for a long time and performs community service regularly. By regulation, letters from churches, unions or other organizations attesting to the applicant's residence must: identify the applicant by name; be signed by an official whose title is shown; show inclusive dates of membership; state the address where the applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization; establish how the author knows the applicant; and establish the origin of the information being attested to. **8 C.F.R. § 245a.2(d)(3)(v). The declaration does not meet regulatory standards.** The declarant failed to indicate any dates of membership, state the address when the applicant resided during the membership period, establish how the author knows the applicant, and establish the origin of the information being attested to. In addition, the declaration is inconsistent with the applicant's Form I-687, Application for Status as a Temporary Resident, dated March 20, 1992. In his Form I-687, at Question #34, the applicant was asked to list all affiliations or associations with clubs, organizations, churches, unions, businesses, etc. The applicant did not list the above organization. This discrepancy detracts from the credibility of the declarant. Based on the above reasons, the declaration can be accorded no weight as evidence of residence during the requisite period.
3. Three declarations regarding the applicant's employment during the requisite period. These are from [REDACTED] Supervisor at Alpine Construction Co., Inc.; from [REDACTED], supervisor at Bajwa Contracting Company; and from [REDACTED] manager at Moor Construction Co. [REDACTED] stated that the applicant began working for her company in October 1987 as a clerk. She also stated that the applicant went to India in November 1987 to December 1987 for vacation and rejoined the firm afterwards. [REDACTED] stated that the applicant worked for her company from March 1981 to April 1984 as a helper. [REDACTED] stated that the applicant worked for the company from June 1984 to September 1987 as an assistant to the clerk. By regulation, letters from employers should be on employer letterhead stationery if available and must include the applicant's address at the time of employment, exact period of employment and layoffs, duties with the company; whether the information was taken from official company records; and where records are located and whether CIS may have access to the records; if records are unavailable, an affidavit explaining this shall also state the employer's willingness to come forward and give testimony if requested. **8 C.F.R. § 245a.2(d)(3)(i).** These declarations fail to meet these regulatory standards. The declarations do not provide the applicant's address at the time of employment. Nor do the declarations offer to either produce official company records or to testify regarding unavailable records. Given this, the declarations can be accorded only minimal weight as evidence of residence during the requisite period.
4. Three declarations regarding the applicant's residence during the statutory period. These declarations are from [REDACTED] and [REDACTED]. Mr. [REDACTED] stated that the applicant resided with him at [REDACTED] Jamaica in New York from March 1981 to April 1984. Mr. [REDACTED] stated that the applicant resided with him at 4598 [REDACTED], Falls Church, Virginia, from June 1984 to September 1987. Mr. [REDACTED]

stated that the applicant resided with him at Arlington, Virginia, from October 1987 to the present. All of the declarants stated that the rent receipts were in their names and the applicant contributed towards the payment of the rent bills. The declarants failed to provide any detail regarding how they met the applicant, how they began living together, or any contemporaneous evidence to support their claimed residence, such as lease agreements, rent receipts, household bills, etc. Because the declarations are significantly lacking in probative value, they have only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

For the reasons noted above, the documents submitted in support of the applicant's claim have been found to have minimal probative value as evidence of the applicant's residence and presence in the United States for the requisite period. Given this, the applicant's claim lacks credibility.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have entered the United States in September 1981 through California and to have resided for the duration of the requisite period in New York and Virginia. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. In this case, his assertions regarding his entry are not supported by any credible evidence in the record.

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 probative value and credible supporting documentation in the record, 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.