

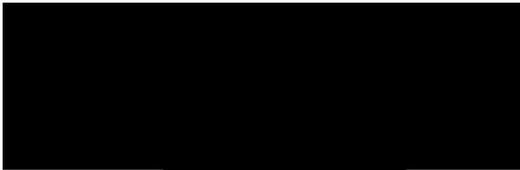
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, D.C. 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



FILE:

MSC 02 158 62620

Office: TAMPA

Date:

OCT 30 2008

L2

IN RE:

Applicant:



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

The 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 puts for a brief disputing the director's findings.

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 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.

At the time the applicant filed his Form I-687 application in September 1990, he presented: 1) a photocopy of page nine of his passport, which indicated that he was issued a B-2 multiple entry non-immigrant visa in Port of Spain, Trinidad on March 21, 1984; 2) a Form I-690, Application for Waiver of Grounds of

Excludability; 3) a photocopy of a birth certificate that does not contain the applicant's name; and 4) a photocopy of his Florida driver's license issued on September 20, 1989.

Items 33 and 36 of the Form I-687 application request the applicant to list all of his residences and employment in the United States since his first entry. The applicant, however, only listed his residence commencing in February 1989 and did not list the names and addresses of his employers. The applicant noted at item 36 that he "can't remember who I worked for."

At the time the LIFE application was filed, the applicant submitted a copy of his marriage register that occurred on June 4, 1988 in Trinidad and Tobago and a statement indicating that he has resided in the United States since June 1981, departed in March 1984 and reentered with a B-2 visa three weeks later. In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant only provided an affidavit notarized July 14, 2003, from [REDACTED] of Tampa, Florida, who indicated that he has known the applicant for over 21 years. The remaining documents submitted have no relevance as they serve to attest to the applicant's residence in the United States *subsequent* to the period in question.

The director, in denying the application, noted that: 1) the affidavit from [REDACTED] only attested to have known the applicant for the past 21 years and that no additional information was provided; 2) the applicant's statement that he could not remember for whom he worked during the requisite period was questionable since he apparently worked at the time; and 3) the applicant had claimed departures from the United States in March 1984 and June 1988, but only listed residence since 1989 and no explanation had been provided to explain this discrepancy. The director determined that the applicant had not presented any credible documents to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988.

On appeal, counsel asserts, in pertinent part:

There was not discrepancy in the dates of residences. As for the listing in Tampa from 2/89 to 4/90 and 4/90 to the present date is not an inconsistency. The exits back to Trinidad were brief, casual and innocent departures from the United States. The applicant did not give up his residence in Tampa Florida during those periods. Therefore, there was no discrepancy. It is not 'questionable' that the applicant could not remember his employer in the Landscaping business. This type of work is daily and not always the same employer. It is not possible to keep track of an employer in this type of work over a period of over twenty years. The decision states, 'none of the evidence you have submitted, other than your own testimony, places you in the United States at the required times.' This is clearly erroneous as in the very same decision, it is stated the applicant submitted a Florida Driver's License in the 1980's that was considered 'hard evidence'. Therefore, it is not just based on the applicant's own testimony.

Counsel submits:

- Two car repair receipts dated October 5, 1981 and February 10, 1983 with a handwritten notation stating "took care for repairs for owner [REDACTED] as a job" and "took care for repairs doing odd jobs."
- A photocopy of [REDACTED]'s Florida driver's license.
- A notarized affidavit from [REDACTED] of Tampa Bay, Florida, who indicated that he first met the applicant in the summer of 1981 while visiting his grandfather in Tampa Bay. The affiant indicated that the applicant "did lawn maintenance for my grandfather." The affiant

asserted that he became reacquainted with the applicant on June 12, 2002 when his grandfather was hospitalized at Memorial Hospital and the applicant was caring for him.

- A notarized affidavit from [REDACTED] of Tampa Bay, Florida, who indicated that he met the applicant in early July 1981 at a restaurant/bar called Arnies in Plattsburgh, New York. The affiant asserted that the applicant was looking for work in the area and he referred the applicant to two construction businesses and to an orchard. The affiant asserted that he saw the applicant a few more times after the first encounter, "but never saw him again in Plattsburgh after about mid-July 1981." The affiant asserted that he met the applicant again in 2001 in Tampa Bay.
- A notarized affidavit from [REDACTED] of Tampa Bay, Florida, who indicated that she met the applicant in the fall of 1981 and that the applicant was recommended through a mutual friend as a reliable person to take care of some handy man chores for a reasonable fee. The affiant asserted that "over the course of the next few years," she encouraged the applicant to enroll in college and that after some encouragement, the applicant enrolled in college, "while still maintaining a fulltime job" and continuing to assist her in lawn care from time to time. The affiant asserted that "during this time, I had an opportunity to meet other members of his family. His lovely wife wanted to meet the person that had encouraged and been such a good friend to her family."

Counsel submits additional documents including letters from his children and several receipts dated during the requisite period. The receipts have no probative value as the receipts failed to list the applicant's name and, therefore, they cannot be attributed to him. The additional documents also have no probative value as they serve only to attest to the applicant's residence in the United States *subsequent to* the requisite period. The letters from the applicant's children have no evidentiary weight as neither child was born before or during the requisite period.

Citizenship and Immigration Services (CIS) has determined that affidavits from third party individuals may be considered as evidence of continuous residence. See *Matter of E-- M--*, *supra*. In ascertaining the evidentiary weight of such affidavits, CIS must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E-- M--*, *supra*, the affidavits would not necessarily be fatal to the applicant's claim, if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony provided. The statements issued by counsel have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through May 4, 1988.

Counsel's assertion regarding the applicant's driver's license has no merit. The driver's license was issued over 16 months after the period in which the applicant had to establish his continuous unlawful residence.

The affidavits from [REDACTED] and [REDACTED] only serve to establish the applicant's presence in Plattsburgh, New York in July 1981 and Tampa Bay, Florida during the summer of 1981, respectively. Mr. [REDACTED] indicated that he did not see the applicant again until 2001 and [REDACTED] indicated that he did not see the applicant again until June 12, 2002. As such, the affiants cannot attest to the applicant's continuous residence in the United States during the requisite period.

The affidavit from [REDACTED] raises questions to its authenticity as the applicant claimed on his Form I-687 application in 1990 and at the time of his LIFE interview on August 6, 2003, that he could not remember for whom he worked during the requisite period. Further, the affiant indicates that the applicant enrolled in college after being encouraged by her “over the course of the next few years” and “during this time, I had an opportunity to meet other members of his family. His lovely wife wanted to meet the person that had encouraged and been such a good friend to her family.” The affiant, however, does not specify the date the applicant enrolled in college or the date that she met the applicant’s wife. The applicant has not submitted any evidence that he was attending college at any time during the requisite period, and the meeting between the affiant and the applicant’s spouse would have occurred *subsequent* to the requisite period as the applicant has indicated that his marriage occurred on June 4, 1988.

The car receipts have no probative value as the applicant’s name was not listed. It is unclear why the applicant would keep the car receipts as he was neither the owner of the vehicles nor paid for the services. Furthermore, the applicant provided no documentation from either owner to support his assertion. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Counsel has not provided a plausible explanation for the director’s finding that the applicant only claimed residence on his Form I-687 application from February 1989. Counsel has neither provided the address to where the applicant purportedly resided nor credible evidence to support the applicant’s place of residence during the requisite period.

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.

While not the basis for the denial of this application and dismissal of the appeal, it is noted that the applicant indicated on his Form G-325A, Biographic Information, signed March 1, 2002, that he resided in his native country, Trinidad, from May 1965 to “June 1982.” This was subsequently amended at the time of his LIFE interview to reflect “June 1981.”

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