

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

[REDACTED]

L2

FILE:

[REDACTED]
MSC 02 014 60095

Office: NEWARK

Date:

OCT 31 2008

IN RE: Applicant:

[REDACTED]

APPLICATION:

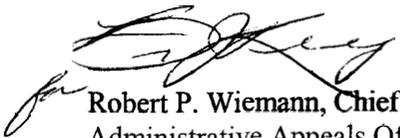
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

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 director in Newark, New Jersey. 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 resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal the applicant submits some additional documentation and asserts that the totality of the evidence establishes that his continuous residence in the United States began before January 1, 1982 and continued through 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.”

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 Egypt who claims to have resided in the United States since November 1, 1980, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on October 14, 2001.

On August 18, 2006, the director issued a Notice of Intent to Deny (NOID), indicating that the evidence submitted by the applicant at his interview for LIFE legalization on November 1, 2002 – consisting of a series of affidavits from individuals who claim to have resided with, or employed, or otherwise associated with the applicant in New York or New Jersey during the 1980s – was insufficient to establish the applicant’s continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

The applicant filed a timely response with additional documentation – including two letters from the Egyptian Consulate in New York indicating that the applicant had registered with the consulate annually since November 1980; photocopied excerpts from a bankbook in the applicant’s name with entries dated from October 1982 to March 1983; a photocopied New York State Driver License in the applicant’s name with an issue date of May 17, 1983; some photographs of the applicant in New York; two letters from a physician listing multiple visits by the applicant between 1980 and 1986 and between 1990 and 2001; as well as a series of new affidavits from individuals who claim to have known the applicant in the United States since 1980, 1981, or 1982.

On June 16, 2007, the director denied the application. After reviewing the documentation of record, the director indicated that the applicant had “offered substantial evidence” of his “presence in the United States in 1983” but “no new substantial evidence” of his “presence in the United States prior to 1982.” Since the applicant had not established that his continuous

residence in the United States began before January 1, 1982, the director concluded that he was not eligible for legalization under the LIFE Act.

On appeal counsel asserts that the previously submitted evidence was not properly considered and the application was erroneously denied. Counsel submits some additional documentation – including another letter from the physician who claims the applicant as a patient since 1980; two photocopied letters dated in April 1981 pertaining to rental property where the applicant claims to have lived; and several additional affidavits from individuals who claim to have known the applicant in the United States since 1980 or 1981.

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 continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that he has not.

The director cited the photocopied New York State Driver License, with an issue date of May 17, 1983, as "substantial evidence" of the applicant's presence in the United States in 1983. The AAO does not agree with this conclusion, however, since the document appears to be fraudulent. For one thing, it identifies the applicant's address as "[REDACTED]" in New York, New York, whereas the applicant claims everywhere else in the record that his address throughout the 1980s was [REDACTED] in Jersey City, New Jersey. Furthermore, the driver license contains mismatched font sizes and the "motorist identification number" does not fit within the designated box.

It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92, (BIA 1988). Moreover, doubt cast on any aspect of the applicant's evidence also reflects on the reliability of the applicant's remaining evidence. *See id.*

The director also cited the photocopied bank book excerpts in the record as possible evidence of the applicant's presence in the United States in 1983. Those excerpts consist of (1) a photocopy of the front and back covers of a passbook from The Seamen's Bank for Savings at Fifth Avenue and 45th Street in New York City and (2) a photocopy of pages 1 and 2 of a passbook identifying the applicant as the account holder and listing a series of deposits and withdrawals between October 12, 1982, the date the account was opened, and March 21, 1983, when the entire balance was withdrawn. There is no clear indication from the photocopies in the record that the

passbook cover and the inside pages relate to the same account. The applicant's name does not appear on the passbook cover. Even if the passbook cover and the transaction pages do relate to the same account, it is noteworthy that the applicant's address does not appear below his name on page 1, and that the entire balance was withdrawn in March 1983, after which no further banking activities were recorded.

In view of these evidentiary infirmities, the AAO agrees with the director that the bank book documentation in the record is no more than "possible" evidence of the applicant's "presence" in the United States at that time. It is not persuasive evidence that the applicant had an established residence in the United States in 1982-1983, since no address is identified on the documents and the bank account was active for only five months.

The photocopied letters pertaining to the residential property at _____ in Jersey City, New Jersey, dated April 16 and April 23, 1981, also look suspect. The first letter is addressed generically to "Tenants" at _____, with the applicant's name written in longhand in the salutation, advising that rent is to be paid to other persons in the future. There is no letterhead identifying the landlord, and no stamp or other authenticating mark to verify the date on the letter. The second letter, ostensibly from the director of Housing Code Enforcement but without an identifying letterhead of that office, is also addressed generically to the tenant in _____ with the applicant's name written in longhand in the salutation. It is a form letter advising that an inspector was unable to enter the premises the previous day and scheduling a reinspection for the following month, but with no date stamp or other authenticating mark. The letter appears to be composed of a mixture of different fonts, the margins are out of alignment, and the photocopy is poor in quality with indecipherable markings above the date in the upper right. For all of the reasons discussed above, the AAO determines that the foregoing letters are not persuasive evidence that the applicant resided at _____ in Jersey City during the spring of 1981.

The initial letter from "_____" of _____ in Jersey City, dated April 11, 1990 and written in longhand, states that the applicant visited his office on four occasions during the 1980s – on November 8, 1980; March 19, 1981; April 11, 1983; and October 9, 1986. The letter from _____ submitted with the appeal, dated July 1, 2007, reiterates that the applicant has been his patient since November 1980, but provides no further details. (Two other letters from _____ list office visits after the requisite period for LIFE legalization.) In the 1990 letter _____ did not identify any address for the applicant, either then or at the time of his office visits from 1980 to 1986. The letter is not accompanied by any medical records confirming the dates of the applicant's office visits, or his address at those times. Thus, the evidence provided by _____ is weak on substance. Even if the information provided by _____ is accepted as genuine, the AAO is not persuaded that four office visits between November 1980 and October 1986 establishes the applicant's continuous residence in the United States over that entire time period.

As for the letters from the Egyptian Consulate General in New York, dated April 19, 1990 and September 8, 2006, the first stated that the applicant “registers in the Consulate yearly since November 9, 1980” and the second stated that the applicant “has been registered in the Consulate since November 9, 1980 up to the present.” Taking the letters at face value, they show only that the applicant registered at the Consulate in 1980 and has renewed his registration annually since then. They do not identify any address(es) for the applicant in the United States between January 1, 1982 and May 4, 1988, and do not show that the applicant maintained continuous residence in the United States during that time period. The letters do not confirm that the applicant took no trip outside the United States longer than 45 days between January 1, 1982 and May 4, 1988, or multiple trips aggregating more than 180 days during that time period, which would have interrupted his continuous residence in the United States. In sum, the letters from the Egyptian Consulate General are too vague about the applicant’s whereabouts to demonstrate that he was continuously resident in the United States during the requisite period for legalization under the LIFE Act.

The record includes affidavits from three individuals who claim to have employed the applicant during the 1980s, including (1) ██████████, dated April 1, 1990, stating that he employed the applicant at the Mubarez Super Market in New York City from December 1980 to November 1984; (2) ██████████, dated February 28, 1990, stating that he employed the applicant at Universal Trade & Commercial, Inc. in Jersey City as a “general worker” from November 5, 1984 to December 1, 1987; and (3) ██████████ (again), dated April 1, 1990, stating that he employed the applicant at the Broadway Gourmet Deli from March 15, 1988 to April 1, 1990. These affidavits do not comport with the regulatory requirements for employment letters set forth at 8 C.F.R. § 245a.2(d)(3)(i). In particular, they did not provide the applicant’s address at the time of employment, did not describe the applicant’s duties, did not declare whether the information was taken from company records, and did not indicate whether such records are available for review. Nor has the applicant submitted any other evidence of his employment, such as earnings statements or income tax records, to supplement the affidavits. For the reasons discussed above, the AAO determines that the employment affidavits have little probative value. They are not persuasive evidence of the applicant’s continuous residence in the United States during the 1980s.

The record also includes an affidavit from ██████████, acting president of the Masjid Al Salam in Jersey City, New Jersey, dated April 11, 1990, stating that the applicant had attended the masjid on a weekly basis since 1983. This affidavit 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 affidavit ██████████ did not indicate where the applicant lived at any time since 1983, did not indicate how he knows the applicant, and did not indicate whether his information about the applicant was based on

personal knowledge, church records, or hearsay. Since the affidavit does not comply with subparts (D), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), and the affiant does not claim to have known the applicant before 1983, the AAO concludes that the affidavit 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 remaining evidence in the record of the applicant's residence in the United States from before January 1, 1982 through May 4, 1988 consists of some photographs assertedly taken in New York during the 1980s and a collection of letters and affidavits, dating from 1990 to 2007, from individuals who claim to have known the applicant in the United States since the early 1980s. The photographs do not bear any identifying dates and, even if they did, would not demonstrate that the applicant had an established residence in the United States before January 1, 1982, or any time up to May 4, 1988. The letters and affidavits all have minimalist or fill-in-the-blank formats that provide little information about the applicant's life in the United States and his interaction with the authors during the 1980s. Most of the authors do not indicate where the applicant lived, and none say anything about where he worked. Nor are the affidavits accompanied by any documentary evidence from the affiants – such as photographs, letters, and the like – of their personal relationship with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that he 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.

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