

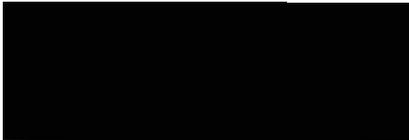
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U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC 02 095 61064

Office: ATLANTA

Date: **SEP 26 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. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: On September 8, 2005, the District Director, Atlanta, Georgia, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant failed to submit credible documents to establish, by a preponderance of the evidence, that he entered the United States prior to January 1, 1982, and that he resided continuously here in an unlawful status from January 1, 1982, through May 4, 1988. The director noted that the applicant had been issued a Request for Evidence (RFE) and a Notice of Intent to Deny (NOID), indicating that he had not submitted sufficient evidence of his entry into the United States prior to January 1, 1982, or his continuous residence in an unlawful status from January 1, 1982, through May 4, 1988. The director further noted that it was the applicant's burden to establish these elements.

On appeal, counsel for the applicant asserts that the director did not sufficiently specify the grounds for denial, thereby denying the applicant an opportunity to respond. Counsel asserts that the director failed to properly verify the documents submitted by the applicant.

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 and 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 period, 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 states 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 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 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). See 8 C.F.R. § 245a.15(b). 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). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

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.

A LIFE Legalization applicant must also provide evidence establishing that, before October 1, 2000, he or she was a class member applicant in a legalization class-action lawsuit. See 8 C.F.R. § 245a.14. In this case, the record reflects that the applicant applied for such class membership by submitting a "Form for Determination of Class Membership in *CSS v. Meese* [CSS lawsuit]," accompanied by a Form I-687 "Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act)," dated April 3, 1990.

On January 3, 2002, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On March 24, 2003, the applicant appeared for an interview based on the application.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden, establishing by a preponderance of the evidence, that his claim of entry into the United States before January 1, 1982, and continuous residence in the United States during the requisite period is probably true. Upon 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:

Letters and affidavits

- A letter dated November 16, 2001, from [REDACTED] a U.S. citizen and friend of the applicant. [REDACTED] attached a copy of his California Driver License, which contains his address, but did not indicate in his letter whether he still lived at that address and did not provide a telephone number. [REDACTED] asserts that he has been living in the United States since September 22, 1962. He states that he knows the applicant and his family from back in India. He asserts that the applicant came to the United States in 1981 and lived in Las Vegas from 1981 to 1990. He asserts that he and the applicant maintain their friendship through phone and family get-togethers on special occasions. He states that the applicant has moved out of state and lives in Columbus, Georgia. While [REDACTED] states that the applicant came to the United States in 1981, he provides no details that would indicate that he has any personal knowledge of the applicant's entry into the United States. [REDACTED] asserts that the applicant lived in Las Vegas from 1981 to 1990, but does not indicate where he himself was living at the time. He states that he and the applicant have maintained their friendship "through phone and family get together," but does not indicate the frequency of the telephone calls or the frequency and location of the get-togethers. He provides no details of the circumstances of the applicant's residence here, not even his addresses, other than the fact that he lived in Las Vegas and now lives in Georgia.

The letter from [REDACTED] can be given minimal evidentiary weight for the additional reason that it contradicts information contained in the record. [REDACTED] asserts that the applicant lived in Las Vegas from 1981 to 1990. This contradicts the information the applicant provided about his residence on his Form I-687. On his Form I-687, the applicant indicated he lived in Corona, New York, from September 1981 to March 1986 and in Elmhurst, New York, from April 1986 to February 1990. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant has not explained these inconsistencies and has not submitted evidence pointing to where the truth lies;

- A fill-in-the-blank "affidavit" form. The form is not dated and contains a stamp and signature of a notary public, but no date when the form was notarized. The form, signed by [REDACTED] allows the affiant to indicate that they personally know the applicant. The form language states that the affiant affirms that he knows the applicant "did in fact leave the United States on _____ and returned on _____. [REDACTED] filled in that the applicant departed the United States on May 15, 1987, and returned on June 17, 1987. No other information is offered. This affidavit can be given minimal weight as evidence of the applicant's continuous residence in the United States. [REDACTED] provides no details about his personal knowledge of the applicant's departure. **In addition, this affidavit,**

while possibly confirming the applicant's absence in 1987, has limited relevance as evidence of his residence in the United States during the requisite period;

- Three "affidavit" forms dated in April 1990. The forms, signed by [REDACTED] allow the affiants to fill in their address and when they have known the applicant since. All three affiants indicate that they had known the applicant since 1981. The form language states that the affiant has personal knowledge that the applicant has resided in the United States. The form also allows the affiant to fill in a statement that he or she has "first hand knowledge of [the applicant's] continuous residence in the United States since 1981 because: _____." [REDACTED] added: "We worked together." [REDACTED] added "We were neighbours together in the same building." [REDACTED] added: "We had come together in this country." These affidavits, prepared on duplicate fill-in-the-blank forms, contain no details regarding any relationship with the applicant during the requisite period and fail to even state when or where the affiants and the applicant met. All three affiants indicate that they have known the applicant since 1981, but none of them provides a specific date. The affiants fail to indicate any personal knowledge of the applicant's claimed entry to the United States during that year or of the circumstances of his residence. There is no evidence that the affiants resided in the United States during the requisite period and no details of any relationship that would lend credibility to their statements.

For the reasons noted above, these letters and affidavits can be given little evidentiary weight and are of little probative value as evidence of the applicant's residence and presence in the United States for the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period. The duplicative language, use of forms and the failure to meet statutory standards also detract from the probative value of the affidavits.

The record of proceedings contains other documents, including the birth certificate of the applicant's U.S. citizen daughter, indicating that she was born on September 10, 1999, the applicant's Georgia Driver's License, issued on December 16, 2000, and employment and tax records for the years 2000, 1999, 1998, and evidence of the applicant's food store business. These documents all indicate physical presence after May 4, 1988, and do not address the applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have first entered the United States without inspection in September 1981, and to have resided for the duration of the requisite period in New York, Nevada, and

Georgia. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has failed to do so.

Having examined each piece of evidence, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has not shown by a preponderance of the evidence he entered into the United States before January 1, 1982, and that he resided continuously in an unlawful status 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 applicant's reliance on affidavits, which lack relevant details, and the lack of any probative evidence of his entry and residence in the United States from prior to January 1, 1982 through May 4, 1988, the applicant has failed to establish by a preponderance of the evidence that he maintained continuous, unlawful residence in the United States 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.