

PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

62

FILE: [REDACTED]
MSC 02 043 60446

Office: SACRAMENTO

Date: **APR 13 2009**

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:

SELF-REPRESENTED

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, Sacramento, California, 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 since before January 1, 1982 through May 4, 1988 as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, the applicant reiterates his claim of residence in this country for the required period and indicates that he had submitted sufficient evidence to demonstrate his residence in this country during the period in question. The applicant provides the names addresses and telephone numbers of three individuals who provided affidavits in support of his claim of residence. The applicant contends that he is unable to obtain further supporting documentation.

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. Section 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 under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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).

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 to May 4, 1988, the submission of any other relevant document including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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. *Id.*

Even if the director has some doubt as to the truth, if the petitioner 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 petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (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 or petition.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing his continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Act, on July 3, 1991. At part #33 of this Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant listed [REDACTED] in Delano, California as his address of residence January 1980 to April 1986 and [REDACTED] in Fresno, California from April 1986 to August 1989. Subsequently, the applicant filed his Form I-485 LIFE Act application on November 12, 2001.

In support of his claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted affidavits signed by [REDACTED] and [REDACTED], respectively, who all attested to the applicant’s residence in this country for a portion of the requisite period. However, none of the affiants provided specific details and verifiable information to corroborate the applicant’s claim of residence in the United States for the period in question. Moreover, the probative value of these affidavits is further limited because none of the affiants attested to the applicant’s residence in this country for the entire period from prior to January 1, 1982 to May 4, 1988.

The applicant provided an affidavit that is signed by [REDACTED]. Mr. [REDACTED] asserted that he first met the applicant in December 1980 and had personal knowledge that the applicant resided at [REDACTED] in Delano, California from December 1980 to October 1986. However, [REDACTED] testimony regarding the date the applicant terminated his residence at this particular address conflicted with the applicant’s testimony that he did not reside at this address after April 1986 at part #33 of his Form I-687 application. Further, [REDACTED] failed to provide any testimony relating to applicant’s residence in the United States after October 1986 through May 4, 1988.

The applicant included affidavits dated June 21, 1991 and October 9, 2001 both of which are signed by [REDACTED]. In the affidavit dated June 28, 1991, [REDACTED] stated that he first met the applicant in 1983 and had personal knowledge that he resided at [REDACTED] in Fresno, California from November 1986 to October 1989. Nevertheless, [REDACTED] testimony that the applicant resided at this particular address from November 1986 to October 1989 did not correspond to the applicant’s testimony that he resided at this address from April 1986 to August 1989 at part #33 of the Form I-687 application. In the affidavit dated October 9, 2001, [REDACTED] revised his prior testimony by declaring that he had known the applicant since

January 1982 and had personal knowledge that the applicant resided at [REDACTED] in Fresno, California from January 1982 to May 1988. However, [REDACTED] failed to provide any explanation for the revision in his testimony which not only contradicted his prior testimony but also contradicted the applicant's testimony relating to his addresses of residence in this country during the requisite period at part #33 of the Form I-687 application.

The applicant submitted affidavits dated June 28, 1991 and October 19, 2001 both of which are signed by [REDACTED]. In the affidavit dated June 28, 1991, [REDACTED] noted that he had known the applicant since 1984 and had personal knowledge that he resided at [REDACTED] in Fresno, California from November 1986 to October 1989. However, [REDACTED] testimony that the applicant resided at this particular address from November 1986 to October 1989 conflicted with the applicant's testimony that he resided at this address from April 1986 to August 1989 at part #33 of the Form I-687 application. In the affidavit dated October 1, 2001, [REDACTED] stated that he had known the applicant since 1985. [REDACTED] failed to advance any explanation as to why he had revised his testimony and directly contradicted his prior testimony regarding the date he first became acquainted with the applicant.

The director determined that the applicant failed to submit sufficient evidence demonstrating his residence in the United States in an unlawful status for the requisite period. Therefore, the director concluded that the applicant was ineligible to adjust to permanent residence and denied the Form I-485 LIFE Act application on July 21, 2004.

On appeal, the applicant reiterates his claim of residence in this country for the required period and indicates that he had submitted sufficient evidence to demonstrate his residence in this country during the period in question. The applicant provides the names addresses and telephone numbers of three individuals who provided affidavits in support of his claim of residence. The applicant contends that he is unable to obtain further supporting documentation. The applicant's remarks on appeal regarding the sufficiency of evidence he submitted to demonstrate his residence in this country during the period in question have been considered. However, the supporting documents contained in the record do not contain specific and verifiable testimony to substantiate the applicant's claim of residence in the United States for the period in question. In addition, the record contains testimony that did not conform and in some cases conflicted with and contradicted the applicant's own testimony relating to his addresses of residence in this country for the requisite period. Although the applicant provides the means to verify the testimony of three affiants, he fails to put forth any compelling reason as to why any attempt to verify information contained in such affidavits should be made in light of the minimal probative value of the applicant's evidence of residence.

The absence of sufficiently detailed supporting documentation as well as the conflicting and contradictory testimony cited above seriously undermines the credibility of the applicant's claim of residence in this country for the requisite period, as well as the credibility of the documents submitted in support of such claim. 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. The applicant has failed to submit sufficient credible

documentation to meet his burden of proof in establishing that he has resided in the United States for the requisite period by a preponderance of the evidence as required under both 8 C.F.R. § 245a.12(e) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's reliance upon documents with minimal or no probative value and conflicting nature of testimony contained in the record, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988 as required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis.

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