

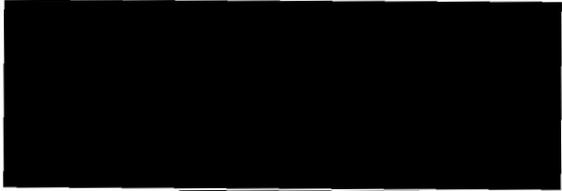


U.S. Citizenship  
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FILE: [REDACTED] MSC 02 244 60846

Office: NEW YORK Date:

**APR 15 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).

IN 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.

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, New York, 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 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 asserts that the director failed to take into account the difficulty for an applicant to obtain primary or verifiable evidence establishing initial entry and continuous residence. Counsel asserts that the applicant has submitted affidavits properly prepared and executed in support of his continuous residence during the requisite period. Counsel asserts that the affidavits are not amenable to verification because of the lengthy periods of time have elapsed since the initial statutory application period.

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).

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 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.

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided the following evidence:

- Affidavits notarized March 15, 1990, and May 15, 1990, from [REDACTED] of Hollandale, Florida and [REDACTED] of Miami, Florida, respectively. [REDACTED] indicated that he has known the applicant for the past eight years and has been friends since that time. [REDACTED] indicated that she has known the applicant for approximately eight years and knows him to be a good neighbor and a kind person.

An affidavit notarized June 29, 1990, from [REDACTED] of Miami, Florida, who indicated that he has known the applicant for the past four years. The affiant asserted that he visited the applicant often in the Bronx when he [the affiant] used to reside in New York City. The affiant attested to the applicant's absence from the United States from July 1987 to August 12, 1987.

- A letter dated July 8, 1990, from [REDACTED] president of [REDACTED] in Bronx, New York, who attested to the applicant's employment as a general construction worker from February 1988 to December 1989.
- An affidavit from [REDACTED] of Bronx, New York, who indicated that he and the applicant worked together at different places as handymen from August 20, 1987 to February 8, 1988.
- A letter dated March 5, 1985, from the Director of Admissions for Florida College of Business in Miami, Florida regarding the receipt of an application for Air Conditioning/Refrigeration Course.
- An affidavit from [REDACTED] of Dade County, Florida, who indicated that he met the applicant in 1983 at the Sitar Restaurant in "Hollywd Shopping Center." The affiant indicated that the applicant occasionally worked with him as a car cleaner during 1983.
- A letter dated July 7, 1990, from [REDACTED] president of [REDACTED], [REDACTED], in Brooklyn, New York, who indicated that the applicant was

employed from February 1985 to December 1986 as a roofer assistant and general handyman.

- An affidavit from [REDACTED] of Bronx, New York, who attested to the applicant's residence at [REDACTED], Bronx, New York from January 10, 1984 to August 25, 1989. The affiant asserted that he and the applicant would meet at the Sikh Temple.
- A photocopied Certificate of Completion from United Career Centers dated November 1, 1983, and receipts dated throughout the requisite period.
- A letter dated December 24, 1983, from [REDACTED] owner of [REDACTED] Inc. in Miami, Florida, who indicated that the applicant was employed as a busboy from January 1982 to December 1983 "for our restaurant."
- A letter dated May 25, 1990, from [REDACTED] who claimed to be the "Paesidnt" of Credit Information Bureau, Inc. in Miami, Florida and indicated that the applicant had applied for credit in October 1983.
- An affidavit from [REDACTED] of Miami, Florida, who indicated that he was the owner of property located at [REDACTED] Miami, Florida and that the applicant was his tenant from July 1981 to December 1983.
- A letter dated April 25, 2004, from [REDACTED], president of [REDACTED], who indicated that the applicant "has been regularly visiting the Gurdwara (Sikh Temple) since 1980's during week days and on weekends."

On June 22, 2007, the director issued a Notice of Intent to Deny, which advised the applicant that the affidavits submitted appeared to be neither credible nor amenable to verification and that no evidence was submitted demonstrating that the affiants had direct personal knowledge of the events testified in their respective affidavits.

Counsel, in response, asserted that the applicant had submitted affidavits properly prepared and executed in support of his continuous residence during the requisite period. Counsel asserted that the regulation at 8 C.F.R. § 245a.2(d)(3)(vi)(L) permits the submission of affidavits and any other relevant document. Counsel submitted copies of documents previously provided along with:

- A photocopied Certificate for Return to School or Work dated June 5, 1983, from a doctor at Encarnacion Medical Care Center, Inc. in Miami, Florida.
- An additional affidavit from [REDACTED], who reasserted the veracity of his initial affidavit. The affiant indicted that he has known the applicant since August 1987.
- An affidavit from [REDACTED], who indicated that he has known of the applicant's presence in the United States since July 1981. The affiant asserted that the applicant called him from Miami, Florida to inform him that he had arrived in the United States. The affiant asserted that in August 1981, the applicant visited him in New York and that the applicant moved to Bronx, New York in January 1984. The affiant asserted that he helped the applicant work as a handyman at different places in New York from 1984 to 1989.

On appeal, counsel asserts that the applicant has submitted relevant, probative, and credible evidence and affidavits to support his claim.

The U.S. Citizenship and Immigration Services (USCIS) 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, USCIS 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, as he has presented inconsistent documents, which undermines his credibility.

The applicant claimed on his Form I-687 application that he was self-employed from January 1984 to May 4, 1988. However, the applicant provided no evidence such as letters from individuals with whom he had done business as required under 8 C.F.R. § 245a.2(d)(3)(i).

The certificate from United Career Centers indicates its facility is registered by the New York State Education Department. The certificate raises questions to its authenticity as the applicant claimed to have been residing in the State of Florida during this period. Likewise, the letter from the Credit Information Bureau, Inc. raises questions to its authenticity as the title of the individual who signed the letter has been misspelled.

The employment letters failed to include the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the affiants also failed to 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 letter from \_\_\_\_\_ has little evidentiary weight or probative value as it does not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, the affiant does not explain the origin of the information to which he attests. In addition, the applicant did not list any affiliation with a religious organization during the requisite period at item 34 on his Form I-687 application.

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 evidence must be evaluated not by the quantity of evidence alone but by its quality. The affiants' statements provided do not provide detailed evidence establishing how they knew the applicant, the details of their association or relationship, or detailed accounts of an ongoing association establishing a relationship under which the affiants could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period. To be considered probative, an affiant's affidavit must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. The affidavit must contain sufficient detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of the facts asserted. The affidavits provided by the affiants do not provide sufficient detail to establish that the witness had an ongoing relationship with the applicant for the duration of the requisite period that would permit the applicant to know of the applicant's whereabouts and activities throughout the requisite period.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), 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 upon documents with minimal probative value, it is concluded that the evidence submitted fails to establish continuous residence in an unlawful status in the United States during the requisite period.

Given the credibility issues arising from the documentation provided by the applicant, it is determined that the applicant has not met his burden of proof. The applicant has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*. Given this, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

Finally, the record contains a court disposition, which reflects that on February 27, 1997, the applicant pled guilty to violating VTL 1192.1, driving while ability impaired, a misdemeanor. While this conviction does not render the applicant ineligible pursuant to 8 C.F.R. §§ 245a.11(d)(1) and 18(a), the AAO notes that the applicant does have a misdemeanor conviction.

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