

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

L2

FILE: [REDACTED]
MSC 02 245 61641

Office: FRESNO

Date: APR 22 2006

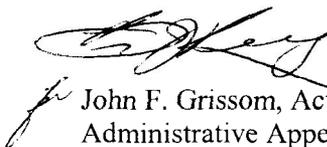
IN RE: Applicant: [REDACTED]

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. 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.


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, Fresno, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, the applicant asserts that he has submitted sufficient evidence to establish his continuous residence. The applicant submits additional evidence on appeal.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – 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. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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 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.

In the Notice of Intent to Deny (NOID), dated June 22, 2007, the director stated that the applicant failed to submit sufficient evidence demonstrating his continuous unlawful residence in the United States during the requisite period. The director noted that the evidence submitted by the applicant, including affidavits and letters, were inconsistent with his testimony at his interview. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated July 21, 2008, the director denied the instant application based on the reasons stated in the NOID. The director noted that the applicant responded to the NOID, but the evidence provided failed to overcome the reasons for denial stated in the NOID.

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. The applicant submitted evidence, including letters and affidavits as evidence to support his Form I-485 application. The AAO has reviewed the entire record. Here, the submitted evidence is neither probative, nor credible.

Employment Letters

The applicant submitted two letters of employment, dated June 10, 1993, and July 31, 2008, respectively, from [REDACTED] of [REDACTED], located at [REDACTED], Los Angeles, CA 90032. In his June 10, 1993 letter, [REDACTED] states that the applicant had been employed as a part-time mechanic helper from February 1978 through November 1992; and, in his July 31, 2008 letter, [REDACTED] states that the applicant had been employed on a "learning basis" from 1980 to 1988.

It is noted that the letters failed to provide the applicant's address at the time of employment. Also, the letters failed to show periods of layoff, 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 as required under 8 C.F.R. § 245a.2(d)(3)(i). The letters, therefore, are not probative as they do not conform to the regulatory requirements.

Affidavits & Letters

The applicant submitted two affidavits from [REDACTED], dated March 10, 1994, and July 7, 2006, respectively. In his March 10, 1994 affidavit [REDACTED] attests that he has known the applicant to have resided in the United States since 1975. [REDACTED] also attests that he became acquainted with the applicant through employment, and that he has had frequent contact with the applicant. In his July 7, 2006 affidavit [REDACTED] attests to having known the applicant to have resided in the United States since 1980. [REDACTED] also attests that he knows that the applicant has been in the United States since 1980, because the applicant is his cousin, and they shared an apartment on [REDACTED], Pasadena, until the applicant moved to Los Angeles, and they visited each other regularly. The affiant, however, does not provide details, such as how he dates his acquaintance with the applicant, how frequently and under what circumstances he had contact with the applicant since 1980, when they shared the apartment in Pasadena, and when the applicant moved to Los Angeles.

As noted above, the letters of employment and the affidavits submitted are lacking detail. These evidentiary items, therefore, are not probative. As such, this evidence does not establish the applicant's continuous residence.

In addition, the applicant has submitted questionable documentation. In an attempt to establish his continuous residence throughout the requisite period, the affidavits and letters provided by the applicant are inconsistent. For example, in his March 10, 1994 affidavit, [REDACTED] attests that he has known the applicant to have resided in the United States since 1975, and that he became acquainted with the applicant through employment. However, in his July 7, 2006 affidavit, [REDACTED] attests to having known the applicant to have resided in the United States since 1980, and that he knows that the applicant has been in the United States since 1980, because the applicant is his cousin and they shared an apartment in Pasadena. Another example, the letters of employment from [REDACTED] are inconsistent as he states in his June 10, 1993 letter, that the applicant had been employed from February 1978 through November 1992; however, in his July 31, 2008 letter, [REDACTED] states that the applicant had been employed from 1980 to 1988. It is also noted that the applicant indicated on his Form I-687 that from February 1978 to November 1992, he had been employed by [REDACTED]. These affidavits and letters, therefore, are inconsistent and puts into question whether any of them are genuine.

The above discrepancies cast considerable doubt on whether the applicant resided in the United States from 1981 as he claims. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect.

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 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.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, he is 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.