



U.S. Citizenship  
and Immigration  
Services

L2

FILE:

MSC 01 296 60659

Office: NEW YORK

Date: FEB 03 2009

IN RE: Applicant:

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, New York, New York, 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 the applicant has provided sufficient evidence to establish his continuous residence in the United States. The applicant submits two additional affidavits 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 2, 2007, the director stated that the applicant failed to submit sufficient credible evidence demonstrating that he entered the United States before January 1, 1982, and his continuous unlawful residence in the United States, during the requisite period. The director noted that the applicant submitted questionable evidence, and that affidavits from [REDACTED] and [REDACTED], appeared neither credible nor amenable to verification. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated July 17, 2007, the director denied the instant application based on the reasons stated in the NOID. The director noted that the applicant failed to submit additional evidence in response to the NOID. The director also noted that the applicant submitted a letter from Hotel Bryant and that previous applicants had presented letters of the same type from that establishment.

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 letters, affidavits, and other documents as evidence to support his Form I-485 application. Here, the submitted evidence is neither probative, nor credible.

#### Affidavits

The applicant submitted the following:

1. An affidavit from [REDACTED], stating that he and the applicant have worked together at [REDACTED] Car Service since 1981.
2. Affidavits from [REDACTED] and [REDACTED]. Both affiants state that they have known the applicant to have resided in the United States since December 1981. [REDACTED] also states that he first met the applicant at a Christmas party in Manhattan. Mr. Jones also states that the applicant traveled to Canada on August 31, 1987, and returned, via Niagara Falls, to Buffalo, New York, on September 15, 1987. The affiants, however, do not indicate whether, and how, they maintained a relationship and/or contact with the applicant since that time.

3. Affidavits from [REDACTED], and [REDACTED] Both affiant state that they have known the applicant to have resided in the United States since July 1985. The affiants also states that they have remained friends with the applicant for over 20 years. However, the affiants do not indicate how they maintained their friendship relationship with the applicant.

The record of proceedings contradicts the applicant's assertion that he has resided continuously in the United States since December 5, 1981. In support of his application the applicant submitted **affidavits from individuals who attest to his continuous residence since December 1981**. The applicant testified and indicated on his Form I-687, that since his entry in December 1981, he departed the United State once, to Canada, on August 31, 1987, and returned to the United States on September 15, 1987. However, the applicant's Form G-325A indicates that he was married, in Senegal, on August 14, 1987.

Also, the applicant has submitted questionable documentation. For example, the applicant submitted a letter from Hotel Bryant in support of his application. However, as noted by the director, previous applicants had presented affidavits of the same type from the establishment, and the director deemed fraudulent the letter from Hotel Bryant Hotel because of similar letters received from these businesses. Therefore, the letter is not credible and is not probative. Another example, the affiant, [REDACTED], attests that he and the applicant have worked together at [REDACTED] Car Service since 1981. The applicant, however, indicated in his Form I-687 application, signed on January 10, 1992, that he had been self-employed street vendor since December 1981, and there is no indication on that application that the applicant had any other form of employment during the requisite period.

The above discrepancies cast considerable doubt on whether the applicant resided in the United States since December 1981 as he claimed. 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.

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