

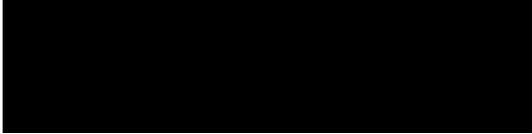
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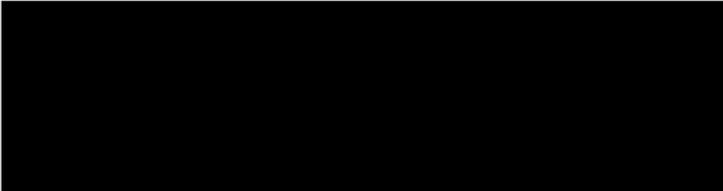
Date: **FEB 03 2009**

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:



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.

A handwritten signature in black ink, appearing to read "J. Grissom".

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, Fairfax, Virginia. It is now on appeal before the Administrative Appeals Office (AAO). 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, and that he maintained continuous physical presence in the United States during the period from November 6, 1986, through May 4, 1988, as required under section 1104(c)(2)(B) and (C) of the LIFE Act.

On appeal, counsel for the applicant submits a brief.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. See section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

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 its amenability to verification. See 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 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, 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 applicant filed a Form I-485, Application to Register Permanent Resident Status or Adjust Status, under the LIFE Act on April 7, 2003. The director denied the application on February 7, 2006. The applicant, through counsel, filed a Motion to Reopen/Reconsider that decision on March 8, 2007. The motion was forwarded by the director to the AAO to be treated as a timely filed appeal.

The AAO maintains plenary power to review this matter on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The federal courts have long recognized the AAO's *de novo* review authority. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The applicant, a native and citizen of the Philippines, claims to have initially entered the United States with his spouse, [REDACTED], on August 3, 1981, by traveling from the Philippines to Mexico and crossing the U.S. border near San Diego, California, without inspection. He claims that he and his spouse remained in the United States, residing at [REDACTED] Ontario, California, until July 1982 when they departed the United States for the Philippines – again by crossing the U.S. border to Mexico – in order to visit their children who were left behind in the Philippines. On a Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act), signed by the applicant on December 21, 1989, the applicant listed his occupation as "owner" and his employer as "to cook for same [sic] people" for the period from September 1981 through October 1982.

A review of objective evidence contained in the reveals the following:

- On July 20, 1982, the applicant obtained a passport in the Philippines. On July 23, 1982, he obtained a nonimmigrant visitor visa (B-1/B-2) at the American Consulate in Manila, the Philippines. On August 8, 1982, using that passport and nonimmigrant visa, he was admitted to the United States at Honolulu, Hawaii - authorized to remain in the United States until September 30, 1982.

The applicant overstayed his authorized period of admission and, on May 18, 1983, an Immigration Judge (IJ) granted him voluntary departure from the United States on or before May 25, 1983.

- On May 19, 1983, the applicant departed the United States and traveled to Nassau, Bahamas, where he remained until May 23, 1983. When he returned to Washington, D.C., he was admitted as a nonimmigrant foreign government official or dependent of a foreign government official (A-2) – authorized to remain in the United States for duration of status.

Based on the above and other objective, credible documentation contained in the record, it is determined that the applicant has established that he resided in the United States continuously from August 8, 1982, through May 4, 1988. However, it is determined that the applicant has failed to demonstrate that he entered the United States prior to January 1, 1982, and resided continuously in an unlawful status from that date through to August 8, 1982, as claimed.

The record reveals that in an attempt to establish his unlawful entry and presence in the United States prior to August 8, 1982, the applicant has provided the following documentation:

1. Similar fill-in-the-blank affidavits, dated December 21, 1989, from [REDACTED] of Glendora, California, and [REDACTED] of Ontario, California. [REDACTED] states that the applicant is his uncle. Ms. [REDACTED] does not indicate her familial relationship, if any, with the applicant. Both affiants state that they know the applicant lived in the United States since August 1981, and list his addresses as follows: Ontario, CA, from August 1981 to October 1982; Alexandria, CA, from November 1982 to June 1984; Falls Church, CA, from June 1984 to September 1986; and, Arlington, CA, from September 1986 to the date the affidavits were signed.
2. A lease signed by the applicant's spouse for a basement suite at [REDACTED] Bailey's Crossroads, Virginia from the one-year period beginning on January 1, 1983.

With regard to No. 1, above, the affiants only provide the cities and state, not the specific street names and numbers, of the addresses being attested to, and, as claimed by the applicant on his Form I-687, "Alexandria," "Falls Church," and "Arlington" are cities in Virginia - not California. Furthermore, the affidavits lack details as to how the affiants have personal knowledge of the applicant's entry into the United States, how frequently and under what circumstances they saw the applicant since entry, and are devoid of details that would lend credibility to their claims. Due to the insufficiency of the information provided by the affiants and the apparent errors contained in their affidavits, their statements cannot be considered credible evidence having evidentiary weight of the applicant's entry into the United States prior to January 1, 1982, and his continuous unlawful residence in the United States from that date through August 8, 1982.

With regard to No. 2, above, neither the applicant's name nor signature is on the lease; the signatures of the landlord, tenant (the applicant's spouse) and witness are not dated; the document is not notarized; the date of the lease agreement (January 1, 1982) appears to have been altered; and it is unexplained as to why the document would have been dated a full year prior to the beginning of the lease period. Therefore, the lease cannot be considered credible evidence having evidentiary weight. It is further noted that a Form DS-394, Notification of Foreign Government-Related Employment Status, dated November 26, 1982, contained in the applicant's alien registration file from the Embassy of the Yemen Arab Republic, shows that the applicant's spouse assumed the duties of a secretary at the Embassy on December 1, 1982, and that prior to that she was employed by \_\_\_\_\_ in Cabanatuan City, the Philippines, from 1977 to August 26, 1982.

Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any 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. (Comm. 1988).

The regulation at 8 C.F.R. § 245a.12(e) provides that "[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods." Preponderance of the evidence is defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." *Black's Law Dictionary* 1064 (5<sup>th</sup> ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

Based on the above discussion, the AAO concludes that the applicant has failed to establish, by a preponderance of the evidence, that he entered the United States prior to January 1, 1982, and maintained continuous unlawful residence from that date through May 4, 1988, as required for eligibility for adjustment of status to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Thus, 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.