

PUBLIC COPY

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave. NW, Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

L2

FILE:

MSC 03 147 61073

Office: NEW YORK Date: FEB 24 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).

IN 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.

A handwritten signature in black ink, appearing to read "John F. Grisson".

John F. Grisson, 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, the applicant asserted that it has been difficult obtaining additional documents to establish his continuous residence due to the passage of time. The applicant submitted additional evidence in support of his appeal and requested an additional 30 days in which to supplement his appeal. However, more than a year later, no additional evidence has been submitted by the applicant.

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:

- A letter dated May 22, 1988, from [REDACTED] of The Alamo, a restaurant in New York City, who attested to the applicant's employment as a cook since January 1986.
- A letter dated February 14, 2003, from [REDACTED], pastor at Our Lady of Sorrows Church in Corona, New York, who indicated that the applicant has been residing in the community since 1984 and "always has come to this church."
- Incomplete lease agreements entered into on September 1, 1986, July 1, 1987, September 1, 1988, for property at [REDACTED], Corona, New York.

On July 20, 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. The applicant was also advised that the telephone number listed on the letterhead for The Alamo was not longer in service.

The applicant, in response, submitted;

- An affidavit notarized July 27, 2007, from a brother, [REDACTED], who indicated that he and the applicant arrived in the United States in 1981 and shared an apartment at [REDACTED], Corona, New York.
- An affidavit from [REDACTED] who indicated that he has known the applicant since 1981 as they were both teammates on a soccer team in Flushing Meadow Park. The affiant asserted that he has remained friends with the applicant since that time. The affiant provided three photographs of the applicant.
- An affidavit from [REDACTED], who attested to the applicant's residence in the United States since May 1981 and to the applicant's employment as a waiter at a

restaurant located at [REDACTED] in New York, City. The affiant asserted that the applicant was his witness at the time of his wedding on July 6, 1981. The affiant provided a copy of his marriage certificate.

- An Authorization for Release of Medical Information from Saint Vincent Catholic Medical Center for his hospital records in June 1986.

The director, in denying the application, determined that: 1) the statement of [REDACTED] contradicted the applicant's claim on his Form I-687 application that his brother, Pedro, was residing in Mexico; 2) the remaining affiants provided no direct knowledge of the applicant's residence during the requisite period; 3) no photographs of [REDACTED]'s wedding were provided and the marriage certificate requested that the witness "print" his/her name; however, only the individual's signature was present and, therefore, it cannot be concluded that the applicant was in fact present; 4) the applicant claimed no affiliation with a club or organization on his Form I-687 application; 5) the photographs failed to provide the location and date they were taken; and 6) although the Authorization for Release of Medical Information listed a social security number (SSN), no evidence was submitted as to when the applicant obtained the SSN and no social security income statement was provided.

On appeal, the applicant submits copies of documents previously provided along with:

- An additional affidavit from [REDACTED] who indicated that he has no photographs of his wedding to provide as he has been divorced from his spouse since November 2006.

An additional affidavit from [REDACTED] who indicated that he has known the applicant since 1981 and asserted that he and the applicant played "in the Soccer Team [REDACTED] { [REDACTED] } for fun and the team was not involved nor associated in any type of organization."

- A Request for a Copy of Your Medical Record from Columbia University Medical Center signed by the applicant on September 18, 2007, requesting medical and billing records for June 1986.
- Several medical documents dated June 11, 1993 from Saint Vincent's Hospital and Medical Center of New York.

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 the applicant 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 contradictory and inconsistent documents, which undermines his credibility. Specifically:

The letter from [REDACTED] attested to the applicant's employment as a cook at The Alamo since January 1986. However, in a letter dated June 28, 2005, [REDACTED], proprietor of The Alamo attested to the applicant's employment history from 1989 to 1992. The affiant further indicated that the applicant "was a employee for the Alamo Restaurant in New York City for just over two and a half years." As conflicting statements have been provided, it is reasonable to expect an explanation from the affiants in order to resolve the contradictions. However, no statement from either affiant has been submitted to resolve the contradicting letters. As such, [REDACTED]'s letter has little probative value or evidentiary weight. Furthermore, the employment letter 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 affiant 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 lease agreements have no probative value as they were not accompanied by the signature page, which would reflect that the leases had been executed and in effect for the claimed time period.

The applicant has not addressed the director's finding regarding his claim on his Form I-687 application that his brother, [REDACTED], had been residing in Mexico during the time period the brother indicated in his affidavit to have been residing in the United States.

Although the director informed the applicant that photographs could be submitted, the photographs submitted have no identifying evidence that could be extracted which would serve to either prove or imply that the photographs were taken in the United States and during the requisite period.

The letter from [REDACTED] 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 pastor does not explain the origin of the information to which he attests. The applicant did not list any affiliation with a religious organization during the requisite period at item 34 on his Form I-687 application.

The remaining affiants failed to state the applicant's place of residence during the requisite period, provide details regarding the nature or origin of their relationship with the applicant or the basis for their continuing awareness of the applicant's residence. 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.

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 evaluation of the applicant's claim is a factor on both the quality and quantity of the evidence provided. While affidavits in certain cases can effectively meet the preponderance of evidence standard, the affidavits submitted by the applicant are lacking in probative value and evidentiary weight and, therefore, the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982, and resided in this country in an unlawful status continuously from before January 1, 1982, through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

The AAO maintains plenary power to review each appeal 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 AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The record contains a Form I-817, Application for Voluntary Departure Under the Family Unity Program, signed October 21, 1991. At Part 1, the form requests that the applicant list his date of arrival. The applicant listed his date of arrival as January 5, 1986. The applicant, however, did not disclose this absence on his Form I-687 application.

The applicant's failure to disclose this absence from the United States is a strong indication that the applicant was not in the United States prior to January 5, 1986 or may have been outside the United States beyond the period of time allowed by regulation. This further undermines the credibility of the applicant's claim to have continuously resided in the United States since before January 1, 1982, through May 4, 1988.

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