



U.S. Citizenship
and Immigration
Services

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

L2

[Redacted]

FILE:

[Redacted]

Office: NEW YORK CITY

Date:

JAN 05 2009

consolidated herein]
MSC 02 233 60999

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:

[Redacted]

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.

for 
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 in New York City. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the grounds that the applicant failed to establish that he entered the United States before January 1, 1982, resided continuously in the United States in an unlawful status from before January 1982 through May 4, 1988, and was continuously physically present in the United States from November 6, 1986 through May 4, 1988.

On appeal, counsel asserts that the applicant has submitted sufficient documentation to establish that he entered the United States before January 1, 1982, and that he resided continuously in the United States in an unlawful status, and was continuously physically present in the country, during the requisite periods for LIFE legalization.

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, as well as 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).

“Continuous unlawful residence” is defined at 8 C.F.R. § 245a.15(c)(1), as follows: “An alien shall be regarded as having resided continuously in the United States if *no single absence* from the United States has *exceeded forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed.” (Emphases added.)

“Continuous physical presence” is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: “An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of *brief, casual, and innocent absences* from the United States.” (Emphasis added.) The regulation further explains that “[b]rief, casual, and innocent absence(s) as used in this paragraph means *temporary, occasional trips abroad* as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.” (Emphasis added.) 8 C.F.R. § 245a.16(b).

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 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 applicant, a native of Colombia who claims to have lived in the United States since September 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on May 21, 2002.

In a Notice of Intent to Deny (NOID), dated August 16, 2007, the director indicated that the documentation submitted by the applicant was not sufficient to establish his entry into the United States before January 1, 1982, his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and his continuous physical presence in the United States from November 6, 1988 through May 4, 1988. Specifically, the director indicated that the applicant was ordered deported from the United States on November 28, 1983, and that the applicant’s trip outside the United States from August 20, 1987 to September 28, 1987, while the deportation order was still in place, interrupted the continuous residence and continuous physical presence requirements for legalization under the LIFE Act. The applicant was granted 30 days to submit additional evidence.

In response to the NOID, counsel submitted a letter from himself and an affidavit from the applicant in which they asserted that the applicant was never under any deportation order, that the applicant's trip outside the United States in 1987 was brief, casual, and innocent, and that this absence from the United States therefore did not interrupt the applicant's continuous residence and continuous physical presence in the United States during the statutory periods for LIFE legalization. Counsel asserted that the evidence of record was sufficient to establish the applicant's eligibility for LIFE legalization.

On September 14, 2007, the director issued a Notice of Decision denying the application on the ground that the response to the NOID was insufficient to overcome the grounds for denial.

On appeal counsel reiterates the applicant's claim to have submitted the requisite evidence to establish his eligibility for LIFE legalization. Counsel submits no additional documentation on appeal.

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 AAO agrees with counsel that the applicant was not under any deportation order¹ and therefore did not interrupt his continuous residence in the United States by virtue of a 39-day trip to Colombia in August and September 1987. *See* 8 C.F.R. § 245a.15(c)(1) and (3). The AAO also agrees with counsel that the nature and duration of the trip, as described by the applicant, conforms with the statutory and regulatory definition of "brief, casual, and innocent" and therefore did not interrupt the applicant's continuous physical presence in the United States. *See* section 1104(c)(2)(C)(i)(I) of the LIFE Act, and 8 C.F.R. § 245a.16(b). The AAO concludes, therefore, that the director erred in finding that the applicant failed to maintain continuous residence and continuous physical presence in the United States because of his absence from the country from August 20 to September 28, 1987.

¹ The record shows that a Form I-130, Petition for Alien Relative, was filed on behalf of the applicant by his wife on July 29, 1983, and approved on November 17, 1983. On November 28, 1983 the New York District Office issued a Form I-171 and a Form I-210 notifying the applicant that he was required to depart the United States by December 28, 1983, and that his petition for preference classification had been forwarded to the United States Consulate at Juarez, Colombia, to be put on the visa waiting list. There is no evidence that the applicant ever returned to Colombia to await the issuance of a visa. There is also no evidence, however, that the Immigration and Naturalization Service (INS) ever issued a deportation order.

The question remains, however, as to whether the evidence of record establishes the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988. The AAO determines that the applicant has established his continuous residence in the United States from June 1983 through May 4, 1988, based on the following documentation:

- A copy of a Certification of Marriage, issued by the City of New York, dated July 5, 1983, showing that the applicant was married to [REDACTED] in New York on July 5, 1983;
- A copy of a Form I-171, Notice of Approval of Relative Immigrant Visa, from the United States Department of Justice, INS, indicating that a relative visa petition filed in New York by [REDACTED] on behalf of the applicant was approved on November 17, 1983.
- A Certificate of Disposition issued by the Criminal Court of the City of New York on October 27, 1987, showing that the applicant committed an offense in New York City on June 22, 1983, and that the offense was dismissed and the record sealed on September 6, 1983.
- Copies of earnings statements and other work-related documentation from employers for the years 1983-1988, copies of New York Telephone bills addressed to the applicant, dated in 1983 and 1984, as well as a divorce decree and a school registration receipt in 1985.

None of this documentation, however, dates before June 1983. Thus, it does not establish that the applicant was residing in the United States during the period from before January 1, 1982 through the spring of 1983.

As evidence of his residence in the United States before June 1983, the applicant has submitted the following documentation:

Copies of two rental receipts dated in December 1981 and March 1982, and a merchandise receipt from [REDACTED] in New York City, dated February 23, 1982. The receipts have handwritten notations of the applicant's name, and in the case of [REDACTED] the applicant's address.

An affidavit from [REDACTED], dated April 14, 1990, attesting that he had known the applicant since 1981, as a friend and as an occasional employee.

An affidavit from [REDACTED], dated April 17, 1990, attesting that the applicant rented a room in his house from December 1981 to July 1982.

An affidavit from [REDACTED] dated March 24, 2004, attesting that he has known the applicant for over 25 years and that he recalled meeting the applicant at a Colombian Independence Day festival in New York in the summer of 1981.

On a Form I-140, Immigrant Petition for Alien Worker, which was filed on behalf of the applicant by [REDACTED] on August 24, 2000, the applicant's date of arrival in the United States was identified as April 1982. This entry date conflicts with the applicant's

claim on a Form I-687 (application for status as a temporary resident), filed in May 1991, that he entered the United States in September 1981, and it undermines the credibility of the affidavits and the receipts listed above.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice without competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

The receipts dated in 1981 and 1982 have handwritten notations with no date stamps or other official markings to verify the dates they were written. The rental receipts do not identify the address of the rental property, and the address on the Stereo Plaza receipt appears to have been added after the fact. Thus, the receipts have little probative value. They are not persuasive evidence of the applicant's residence in the United States during the years 1981 and 1982.

As for the affidavits in the record, from acquaintances who claim to have employed, resided with, or otherwise known the applicant during the 1980s, all have minimalist formats with little personal input by the affiants. Considering the length of time they claim to have known the applicant – in all cases since 1981 – the affiants provide remarkably little information about his life in the United States and their interaction with him over the years. Nor are the affidavits accompanied by any documentary evidence – such as photographs, letters, and the like – of the affiants' personal relationship with the applicant in the United States during the 1980s. Furthermore, [REDACTED] claimed to have seen the applicant at a festival in New York on July 20, 1981 – which was before the date the applicant indicated on his Form I-687 that he entered the United States (September 1981), or the date the applicant's employer stated on the Form I-140 that he entered the United States (April 1982). In view of these substantive shortcomings, the affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 up to June 1983.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that his continuous residence in the United States began before June 1983. Since the applicant has not established that he resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, he is ineligible for permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act.

The appeal will be dismissed, and the application denied.

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