

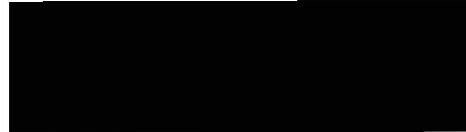
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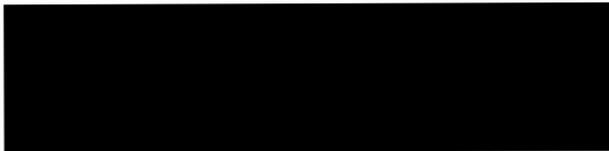
Date: JAN 05 2009

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. 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 H. Vaughan*
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. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that he entered the United States before January 1, 1982, and resided continuously in the United States in an unlawful status from before January 1, 1982 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 resided continuously in the United States in an unlawful status during the requisite period 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 Ecuador who claims to have lived in the United States since 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on February 25, 2002.

In a Notice of Intent to Deny (NOID), dated August 17, 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, and his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

In response to the NOID, counsel submitted a letter asserting 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.

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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered the United States before January 1, 1982, and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that he has not.

The documentation submitted by the applicant in support of his claim that he was continuously resident in the United States during the requisite period for LIFE legalization consists of the following:

- A letter of employment from the president of Van-Dam Dining Corporation in Long Island City, New York, dated July 29, 1989, stating that the applicant was employed as a kitchen helper from March 1981 to the present (1989), and was paid \$175.00 per week.
- Two letters from Our Lady of Sorrows Church in Corona, New York, dated July 28, 1989 and September 28, 2007, attesting that the applicant had been a member of the church since 1981.
- Two notarized letters from [REDACTED], dated April 26, 2004 and October 4, 2007, stating that he had known the applicant since 1981 as a result of his college's business relationship with the Van Dam Diner, where the applicant worked.
- Seven notarized letters and affidavits from acquaintances, dated in 1989, 2004, and 2007, attesting that they have known the applicant since the 1980s and that the applicant had resided in the country since 1981.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each document in this decision.

The AAO notes that although the applicant claimed at his LIFE legalization interview on February 4, 2005, that he entered the United States in December 1981,¹ and resided continuously

¹ On a Form I-687 (application for status as a temporary residence) he filed on August 24, 1989, the applicant claimed that he first entered the United States in February 1981.

in the country in an unlawful status through May 4, 1988, with a brief visit to Ecuador in December 1987, documentation in the record indicates otherwise. For example, at his interview the applicant stated that he had six children, five of whom were born during the 1980s, in the years 1980, 1983, 1984, 1986 and 1988. On his Form I-687, dated in 1989, the applicant indicated that he left the United States on December 5, 1987 to visit his family in Ecuador and returned to the United States on January 3, 1988. The applicant did not list any other absences from the United States in the 1980s. A copy of a Divorce Judgment by the New York State Supreme Court, dated August 8, 1996, listed the names and dates of birth the applicant's children as follows: [REDACTED], born on October 26, 1980; [REDACTED], born on June 26, 1983; [REDACTED], born on June 27, 1985; and [REDACTED], born on April 12, 1988. Copies of the birth certificates of the applicant's children in the file show that the four children listed above were all born in Ecuador, and two more were born in the United States on January 30, 1997 and December 31, 1998. The applicant did not provide any explanations as to how his wife could have conceived and given birth to four children in Ecuador during a period when the applicant claims to have been continuously physically present in the United States. The contradictory information in the record, and the absence of any objective evidence to establish when the applicant entered the United States, cast doubt on the veracity of his claim that he entered the United States before January 1, 1982, and resided continuously in the country in an unlawful status through May 4, 1988.

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 letter of employment from the president of Van-Dam Dining Corporation in Long Island City, New York, attesting that the applicant had been employed as a "kitchen helper" since March 1981, does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because the author did not provide the applicant's address during the period of employment, did not indicate whether the information was taken from company records, and did not indicate whether such records are available for review. Nor was the letter supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed during any of the years claimed. Thus, the employment letter has limited probative value. It is not persuasive evidence that the applicant resided continuously in the United States from before January 1, 1982 through May 4, 1988, as required for legalization under the LIFE Act.

The letters from [REDACTED] and [REDACTED] of Our Lady of Sorrows Church in Corona, New York, dated July 28, 1989 and September 28, 2007, respectively, do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(v), which specifies that attestations by religious and related organizations (A) identify the applicant by name, (B) be signed by an official (whose title is shown), (C) show inclusive dates of membership, (D) state the address where the applicant resided during the membership period, (E)

include the organization seal impressed on the letter or the letterhead of the organization, (F) establish how the author knows the applicant, and (G) establish the origin of the information about the applicant. The letters stated generally that the applicant has been a parishioner since March 1981, and came to church on a regular basis, but did not state where the applicant lived at any point in time during the years 1981-1988, did not indicate how and when the clergymen met the applicant, and did not state whether their information about the applicant was based on their personal knowledge, the church records, or hearsay. Since the letters did not comply with subparts (D), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), the AAO concludes that they have little probative value. The letters are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

As for the notarized letters from [REDACTED], dated in 2004 and 2007, he claims to have met the applicant in 1981, but did not describe the circumstances of their meeting in any detail and how he remembers, a quarter of a century later, that it was precisely in 1981 that they met. Mr. [REDACTED] is vague about whether the applicant personally catered events at his college uninterruptedly during the entire quarter century from 1981 to the dates of the letters. Considering the length of time [REDACTED] claims to have known the applicant, he provided few details about the applicant's life in the United States year by year, especially during the 1980s. For the reasons discussed above, the letters have limited probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

As for the other letters and affidavits in the record – dated in 1989, 2004 and 2007 – from acquaintances who claim to have worked with, resided with, or otherwise known the applicant during the 1980s, all have minimalist or fill-in-the-blank formats with little personal input by the affiants. Considering the length of time they claim to have known the applicant – in most cases since the early 1980s – the authors provide remarkably little information about his life in the United States and their interaction with him over the years. None of the letters and affidavits is accompanied by any documentary evidence – such as photographs, letters, and the like – of the authors' personal relationship with the applicant in the United States during the 1980s. Lastly, three of the authors do not claim to have known the applicant before 1984. In view of these substantive shortcomings, the letters and 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 through May 4, 1988.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that he entered the United States before January 1, 1982, and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act. Accordingly, the applicant is ineligible for permanent resident status under 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.