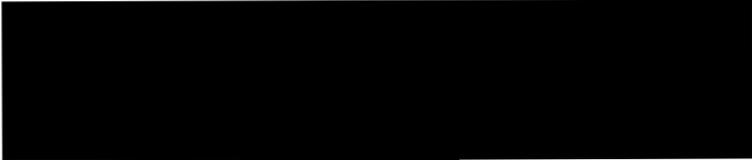


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FILE:



Office: NEW YORK

Date:

[consolidated herein]

JAN - 5 2009

MSC 03 126 62087

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.

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. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish he had entered the United States before January 1, 1982, and had resided continuously in an unlawful status in the United States from then through May 4, 1988.

On appeal, counsel for the applicant submits a brief statement.

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 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 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 regulation at 8 C.F.R. § 245a.2(d)(3)(v), states that attestations from churches, unions, or other organizations should: identify the applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where the applicant resided during the membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

The applicant, a native and citizen of Ecuador, claims to have initially entered the United States without inspection in July 1981 and to have departed the United States on only one occasion – from March to April 1988 in order to attend his father's funeral.

The applicant filed a Form I-485, Application to Register Permanent Resident Status or Adjust Status, under the LIFE Act on February 3, 2003. On September 23, 2007, the director denied the application. The applicant filed a timely appeal from that decision on October 19, 2007.

The issue in this proceeding is whether the applicant has demonstrated that he continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

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 record reflects that in an attempt to establish his entry into the United States prior to January 1, 1982, and his continuous unlawful residence in the United States from that date through May 4, 1988, the applicant has provided the following documentation:

Affidavits from Acquaintances:

1. A fill-in-the-blank affidavit, dated June 2, 1993, from [REDACTED] of Brooklyn, New York, stating the applicant had been his friend since July 1981 and listing the applicant's addresses in Brooklyn since then.
2. A letter, dated June 7, 1993, from [REDACTED] of Brooklyn, New York, stating that the applicant resided at two different addresses in Brooklyn since July 1981, and that he worked for Los Alamos Restaurant from August 1981 to February 1986; at [REDACTED] and at [REDACTED] from April 1986 to June 1990.
3. A letter, dated May 4, 2007, from [REDACTED] of Brooklyn, New York, stating that he had known the applicant since 1981. [REDACTED] states that at that time he had a second-hand appliance store in Brooklyn and that when the applicant passed by in the afternoon, they would have long conversations.
4. A letter, dated September 3, 2007, from [REDACTED] of Brooklyn, New York, stating that he had known the applicant since 1981 when he visited [REDACTED] home with one of his [REDACTED] family members.
5. A letter, dated September 4, 2007, from [REDACTED] of Brooklyn, New York, stating that he had known the applicant since 1981 when they lived together at [REDACTED] in Brooklyn.

The affiants are generally vague as to how they date their acquaintances with the applicant, how often and under what circumstances they had contact with the applicant during the requisite period, and lack details that would lend credibility to their claims. It is unclear as to what basis the affiants claim to have direct and personal knowledge of the events and circumstances of the applicant's residence in the United States throughout the requisite time period. As such, they can only be afforded minimal weight.

Employment Letters:

6. A letter, dated April 8, 2007, from [REDACTED] of Checks and More in Brooklyn, New York, stating that he remembers the applicant did cleaning and

errands for him in 1981. In a second letter, dated September 7, 2007, [REDACTED] states that he had known the applicant since 1981 and that the applicant worked for him cleaning and running errands “for a few years.”

The employment letters provided by [REDACTED] do not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i) in that they fail to 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.

Church Attestations:

7. A letter, dated June 3, 1992, from the Parochial Vicar of Saint Catherine of Alexandria in Brooklyn, New York, stating that the applicant had been a registered member of the parish since 1986.
8. A letter, dated April 11, 2007, from the Pastor of St. Thomas Aquinas Church in Brooklyn, New York, stating that the applicant began attending the church in 1981.

With regard to the above church attestations, No. 7 does not show the address where the applicant resided throughout the membership period or establish the origin of the information being attested to (i.e., whether the information being attested to is anecdotal or comes from church membership records). The attestation in No. 6 also does not establish the origin of the information being attested to and merely attests to the applicant’s having been a member of the parish since 1986.

Other Documentation:

9. A letter, dated June 9, 1993, from [REDACTED], of Shaklee in Brooklyn, New York, stating that in more or less mid-1987, the applicant came to his nutrition’s office because he was feeling tired.
10. An undated photograph of the applicant and a person identified as [REDACTED] in front of their apartment in Brooklyn (see No. 8, above).
11. Receipts dated in or after 1986.

The receipts are dated in or after 1986, the letter from [REDACTED] merely attests to the applicant’s presence in the United States at sometime in mid-1987, and the photograph is undated. Therefore, this documentation also carries little evidentiary weight or probative value

regarding the applicant's residence and physical presence in the United States throughout the requisite time period.

In summary, the applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), no hospital or medical records that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv), and no church letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(v). The applicant also has not provided documentation (including, for example, money order receipts, passport entries, children's birth certificates, dated bank book transactions, letters of correspondence, a Social Security card, automobile contract, insurance documentation, tax receipts, insurance policies, or letters according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (K), dated throughout the requisite time period. The documentation provided by the applicant consists solely of third-party affidavits ("other relevant documentation") that lack details and are of minimal evidentiary weight.

It is noted that the record also reflects that at the time of an interview on July 7, 1993, the applicant was unable to remember his home address or where he worked from 1981 to 1986, and admitted that he had written his name of two of the receipts provided. It is further noted that while [REDACTED], in No. 5, above, states that he met the applicant when they lived together at [REDACTED] in Brooklyn, the applicant indicated on a Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Act), signed by him on June 2, 1993, that he had not resided at [REDACTED] in Brooklyn until May 1986.

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 documentation submitted, it is concluded that the applicant has failed to establish, by a preponderance of the evidence, that he entered the United States before January 1, 1982, and maintained continuous unlawful residence since such 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.