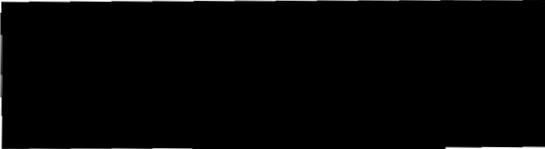




U.S. Citizenship
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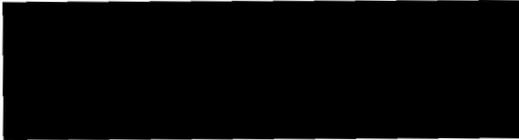
Applicant:



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.

John F. Grissom
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. The decision 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 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 director did not properly evaluate the evidence submitted by the applicant. In counsel's view, the documentation in the record is sufficient to establish that the applicant entered the United States before January 1, 1982 and resided continuously in the country 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 Guyana 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 3, 2002.

In a Notice of Intent to Deny (NOID), dated August 10, 2007, the director indicated that the applicant had not submitted credible evidence to establish that he entered the United States before January 1, 1982, and resided continuously in the country in an unlawful status through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

In response to the NOID the applicant submitted a personal affidavit reasserting his claim to have entered the United States before January 1, 1982 as well as updated versions of affidavits from three affiants who had previously submitted affidavits.

On September 10, 2007, the director issued a Notice of Decision denying the application on the ground that the documentation submitted in response to the NOID was insufficient to overcome the grounds for denial.

On appeal, counsel asserts that the director did not properly evaluate the evidence submitted by the applicant. In counsel's view, the documentation in the record is sufficient to establish that the applicant entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status through May 4, 1988. Counsel submits no additional documentation with the 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 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 entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status through May 4, 1988, consists of the following:

- Affidavits from [REDACTED], in Philadelphia, Pennsylvania, dated October 24, 1990, and August 27, 2007, attesting that the applicant lived in his house at [REDACTED] Philadelphia, Pennsylvania, and worked for him as a carpenter from September 1, 1981 to December 1985, at which time the applicant moved to Brooklyn, New York, where he continued to work for [REDACTED] on a part-time basis until 1989. [REDACTED] further attested that the applicant was paid \$300.00 per week.
- Copies of detailed work completed by [REDACTED] at [REDACTED] Brooklyn, New York, and [REDACTED], New York, New York, dated May 5, 1986 and February 6, 1987, respectively, signed by the applicant as the contractor on behalf of [REDACTED] and by [REDACTED] on behalf of Real Estate Management.

Copies of residential apartment leases between the applicant and [REDACTED] landlord at [REDACTED], Brooklyn, New York, for the period of January 1, 1986 through December 31, 1988.

Affidavits from seven individuals dated in 1990, 1992 and 2007 who claim to have known the applicant resided in the United States during the 1980s.

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

The applicant's claims that he entered the United States in September 1981, resided continuously in the country through May 4, 1988, and had just one trip outside the country to Canada in August 1987, are contradicted by the record. According to the United States Citizenship and Immigration Services (USCIS) record, the applicant applied for admission into the United States at Champlain, New York, on November 1, 1981 (under the assumed name of [REDACTED]), and was refused admission. The applicant did not submit, and the record does not contain, any documentation showing when the applicant first entered the United States. On his Form I-485, filed in May 2002, the applicant stated that his daughter, [REDACTED], was born on September 24, 1984, in Guyana. There is no evidence in the record that the applicant traveled to Guyana in 1983 or 1984. The applicant did not provide any explanation of how his wife could have conceived and given birth to his child at the same time the applicant claims to have been physically present in the United States.

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 photocopies of the residential apartment leases between the applicant and [REDACTED] for the time period of January 1, 1986 through December 31, 1988, do not include notarial stamps or other official markings to authenticate the dates indicated on the leases. Nor are the leases supplemented by copies of rental receipts, utility bills, or other documentation to show that the applicant actually resided at the Brooklyn, New York, address during the years indicated. In view of these substantive deficiencies, the residential lease agreements have limited probative value. They are not persuasive evidence of the applicant's continuous residence in the United States during the years 1986 to 1988.

The affidavits in the record – dated in 1990, 1992 and 2007 – from individuals who claim to have known the applicant during the 1980s, all have minimalist or fill-in-the-blank formats with little personal input from the affiants. The affiants provide few details about the applicant's 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. In addition, four of the affiants only provided information about the applicant's trip to Canada in 1987, and nothing whatsoever about the applicant's residence in the United States during the 1980s. 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 through May 4, 1988.

As for the affidavits from [REDACTED] dated in 1990 and 2007, who claims to have employed and provided accommodation to the applicant during the 1980s, they provide only scanty information about the applicant's life in the United States. Considering the duration of their acquaintance, it is remarkable how few details [REDACTED] provides about his interaction with the applicant over the years. The only documentary evidence of the affiant's personal relationship with the applicant in the United States during the 1980s are photocopied work contracts dated in 1986 and 1987. These documents, however, have strange features which call their authenticity into question. They have myriad inconsistent font types, for example, and an odd looking line that separates the letterhead from the body of the document. In addition, the documents do not have any notarial stamps or other official mark(s) verifying the dates appearing thereon. In view of the substantive shortcomings of the affidavits and the questionable authenticity of the work contracts, these documents 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.