

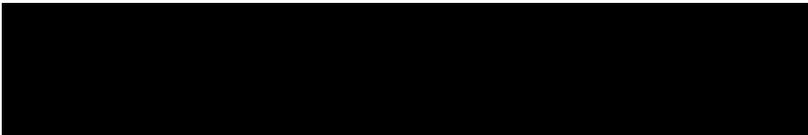
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office MS 2090
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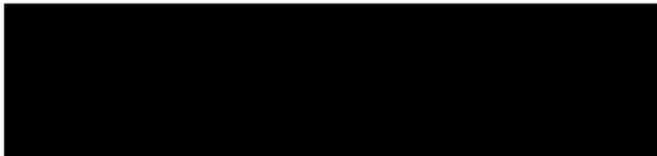
Applicant:



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, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, New York. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application, finding that the applicant had not provided credible evidence to establish that he had entered the United States prior to January 1, 1982, and thereafter continuously resided in the United States in an unlawful status for the duration of the requisite period. The director also determined that the applicant's absence from the United States for the purpose of acquiring permanent residence in another country was not brief, casual and innocent and interrupted the period of required physical presence in the United States.

A LIFE legalization applicant must show continuous physical presence in the United States from November 6, 1986 through May 4, 1988. *See* Section 1104(c)(2)(B) of the LIFE Act. An absence during this period which is found to be brief, casual and innocent shall not break a LIFE legalization applicant's continuous physical presence. A brief, casual and innocent absence means a temporary, occasional trip 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. 8 C.F.R. § 245a.16(b).

The record indicates that during the applicant's Form I-458 LIFE legalization interview he stated that he traveled outside the United States to Canada to apply for Canadian residence. The applicant claims that he left the United States on July 15, 1987 and returned on August 19, 1987 for an absence of 35 days. The AAO finds that the applicant's absence from the United States in this case was inconsistent with applicant's intention to resume residence in the United States. Therefore, the applicant has not shown that he maintained continuous physical presence in the United States.

The remaining issue is whether the applicant established entry into the United States prior to January 1, 1982, and thereafter continuously resided in the United States in an unlawful status for the duration of the requisite period.

On appeal, counsel states that due consideration has not been given to the evidence submitted which clearly establishes the applicant's eligibility.

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 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 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.* at 80. 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 petitioner 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 or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (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 or petition.

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).

At issue in this proceeding is whether the applicant submitted sufficient credible evidence to meet his burden of establishing that he (1) entered the United States before January 1, 1982, and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1, 1982 and lived in an unlawful status during the requisite period consists of affidavits of relationship written by friends and other evidence. The AAO will consider all of the evidence relevant to the requisite period to determine the applicant’s eligibility.

During his Form I-687 application interview, the applicant claimed that he entered the United States without inspection at the end of 1980. The applicant explained in his interview that he came from Bangkok to Santo Domingo, Dominican Republic, and then from Santo Domingo, Dominican Republic to Miami by boat. In the applicant’s class membership (LULAC) determination form, the applicant stated that he first entered the United States without inspection on May 15, 1981. However, on the applicant’s Form I-485, Application to Register Permanent Residence or Adjust Status, he

claimed that he was last admitted into the United States at Boston, Massachusetts, on August 1, 1981 as an F-1, student. The applicant's Form I-765, Application for Employment Authorization filed June 2, 2002, also states that the applicant's last entry into the United States was August 1, 1981 as a nonimmigrant student. Therefore, there is a discrepancy as to the date and manner in which the applicant first entered the United States. The applicant does not submit a copy of any previous passport, Form I-94 Departure Record or other documentary evidence showing that he entered the United States prior to January 1, 1982.

The applicant submitted letters to establish his initial entry and residence in the United States during the requisite period. The letter from [REDACTED] states that she has known the applicant since 1983. [REDACTED] and [REDACTED] state in their letters that the applicant was introduced to them when he came to New York and they have been friendly since 1981. The letters provide no other information about the applicant.

[REDACTED] states in his letter that he met the applicant in New York at a birthday celebration for his cousin on January 3, 1983. [REDACTED] states in his affidavit that he met the applicant in New Jersey in 1985. Apart from mentioning a few social activities they did together, the affidavit and letter provide no other information about the applicant.

The letter from [REDACTED] of the Tasmia Dental Care facility states that the applicant has been under his treatment since 1986. However, public records indicate that the Tasmia Dental, P.C. was not incorporated until April 13, 2001. The applicant's treatment at the facility in 1986 does not appear to be probable.

The letter signed by [REDACTED] states that he met the applicant in the fall of 1981 and that the applicant resided with him at [REDACTED] from January 1982 to December 1984. [REDACTED] states in his letter that the applicant has been living with him since 1983 and gives the address as [REDACTED]. The information in [REDACTED]'s letter contradicts the information given by [REDACTED] and the applicant's Form I-687 application that states he resided in Cambridge, Massachusetts from January 1982 to December 1984. [REDACTED] states in his letter that the applicant came to the United States with his uncle and resided with him from September to December 1981 at [REDACTED]. However, the applicant claims on his Form I-687 application that he resided in Florida in 1981.

In his affidavit dated December 18, 1991, [REDACTED] states that he has personally known and been acquainted with the applicant and has knowledge that he resided in the United States at [REDACTED] from June 1981 to December 1982 and [REDACTED] from January 1983 to the date he signed the affidavit. However, the applicant claims on his Form I-687 application that he resided in Florida from 1981 to 1982, Cambridge, Massachusetts, from January 1982 to December 1984, Brooklyn,

New York, from 1985 to 1988 and Kissimmee, Florida, from 1988 to 1991, which contradicts the information given in [REDACTED] affidavit.

The applicant also provides a copy of a money order, four receipts, and letters from different businesses dated within the requisite period. A bank letter and money order from two different banks are addressed to the applicant at an address in Florida not claimed on the Form I-687 and prior to his first entry into the United States.

Form G-325, filed in conjunction with Form I-485, Application to Register Permanent Resident or Adjust Status application and signed by the applicant on May 20, 2002 indicates that the applicant resided at [REDACTED] from January 1981 to May 2002 and was self-employed from January 1981 to May 2002. This evidence directly contradicts the information given in the letters by [REDACTED] and [REDACTED] and the applicant's Form I-687 application that state he resided in Florida from 1981 to 1982, Cambridge, Massachusetts, from January 1982 to December 1984, [REDACTED] from 1985 to 1988, and Kissimmee, Florida, from 1988 to 1991.

The applicant provided letters from the organizing secretary, [REDACTED] of the Jamaica Muslim Center, Inc., Jamaica, New York, and from [REDACTED] who is associated with the Bangladesh Society, Inc. in Elmhurst, New York. In the letter, [REDACTED] states that the applicant has been performing at the Friday prayers since 1983. However, on his Form I-687 application, the applicant does not claim affiliation with this organization and states that in 1983, he resided at [REDACTED] Cambridge, Massachusetts. [REDACTED] states that the applicant became a member of the Bangladesh Society, Elmhurst, New York, in August 1981, and although the organization is listed on his Form I-687 application, the applicant claims that he resided in Florida from 1981 to 1982. Further, the regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must (1) identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to. The letters from [REDACTED] and [REDACTED] do not contain most of the aforementioned requirements and can only be given nominal weight.

[REDACTED], manager of the Hunan Lou Chinese Restaurant, New York, New York, states in his letter that the applicant was employed as a dish washer from August 1981 to October 1982. The applicant claims that he resided in Florida from 1981 to 1982. [REDACTED] a farm labor contractor, states that the applicant worked as a field supervisor supervising the bean field in Florida from May 1985 to May 1987. However, the applicant claims on his Form I-687 application that he resided at [REDACTED] from 1985 to 1988. In a letter from

██████████ General Contractor, Brooklyn, New York, ██████████ states that the applicant used to work in the company from January 1, 1983 to December 1988. The applicant claims that he resided in Cambridge, Massachusetts, from January 1982 to December 1984. Moreover, Form G-325 indicates the applicant was self-employed from January 1981. Further, 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. As the letter does not meet the requirements stipulated in the aforementioned regulation and conflicts with other evidence of record, it will be given no weight.

The applicant also submitted three stamped envelopes. However, the probative value of one of the envelopes is limited in that the postmark dates are not legible. Further, based on the applicant's Form I-687 application and Form G-325, the postmark dates on the other envelopes do not coincide with the time period the applicant claimed to have resided at those addresses.

The inconsistencies in the evidence provided regarding the applicant's initial entry and continuous residence in the United States are material to the applicant's claim in that they have a direct bearing on the length of time the applicant actually resided in the United States during the requisite period. No evidence of record resolves these inconsistencies. 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 unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Considering all the evidence of record, the AAO finds that the applicant has not established that he resided in the United States for the requisite period. Given the lack of detail in the affidavits and letters and the inconsistencies regarding the applicant's initial entry, employment and residences in the United States, the applicant has failed to submit sufficient evidence to overcome the director's denial. The evidence calls into question the credibility of the applicant's claim of continuous unlawful residence in the United States throughout the requisite period. The evidence submitted is insufficient to establish the applicant's 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 the requisite period.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and continuously resided in an unlawful status in the United States for the requisite period as required under Section 1104(c)(2)(B) of the LIFE Act. The applicant failed to show continuous physical presence in the United States from

November 6, 1986 through May 4, 1988. Given this, 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.