

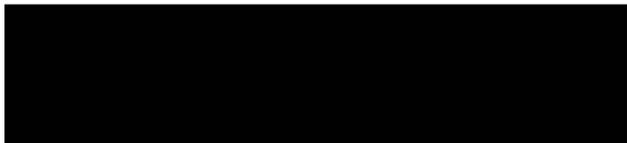
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U.S. Department of Homeland Security
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U.S. Citizenship
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FILE:

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Office: GARDEN CITY

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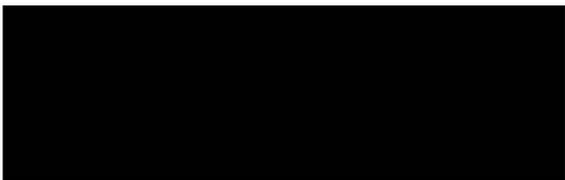
Applicant:



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).

IN 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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

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, Garden City, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

On appeal, counsel asserts that the director failed to consider the additional evidence submitted in response to the Notice of Intent to Deny. Counsel asserts that the director has failed to consider the totality of the evidence and testimony given by the applicant

An applicant for permanent resident status under section 1104 of the LIFE Act must establish 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 May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b).

The applicant 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 under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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.* 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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period. Here, the applicant has failed to meet this burden.

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided the following evidence:

- Several photocopied rent receipts for premises at [REDACTED] Whittier, California.
- An affidavit dated July 26, 1990, from [REDACTED] of North Hollywood, California, who attested to the applicant's employment as a mechanic helper since 1986.
- Affidavits from [REDACTED] and [REDACTED] who attested to the applicant's residence in Whittier, California since March 1981. The affiants asserted that they met the applicant in March 1981 and April 1981, respectively through mutual friends.
- An affidavit from [REDACTED], who attested to the applicant's residence at [REDACTED] Whittier, California since March 1981. The affiant asserted that he is a co-tenant of the applicant.

At the time of his initial interview on July 10, 1992, with an assistance of an interpreter, the applicant indicated that he departed the United States in 1987 due to the death of his mother. However, the applicant, indicated on his Form I-687 application signed April 29, 1990, that his mother was still living and that the purpose for his trip was to take a vacation.

On July 22, 2007, the director issued a Notice of Intent to Deny, which advised the applicant that the affidavits submitted did not contain sufficient objective evidence to which they could be compared to determine whether the attestations were credible, plausible, or internally consistent with the record, and that no evidence was submitted demonstrating that the affiants had direct personal knowledge of the events testified in their respective affidavits. The applicant was also advised that: 1) his inconsistent statement regarding the purpose for his 1987 absence from the United States casts doubt upon the veracity of his claimed residence; 2) the numbers on the rent receipts were not in numerical sequence, the signatures on the rent receipts were indecipherable and no information was provided in which to contact the individual in order to verify the authenticity of the photocopied receipts; and 3) he indicated on his Form G-325A, Biographic Information, to have resided in his native country, India, from birth to July 1987.

The director, in denying the application on August 27, 2007, noted that the applicant failed to respond to the Notice of Intent to Deny. The record, however, reflects that a response was received prior to the issuance of the director's decision. The response will be considered on appeal.

Counsel, in response, asserted that the minor and immaterial discrepancies found in the applicant's statements made over the years, should not be used to discredit the applicant without considering the totality of the evidence submitted. Counsel asserted that the applicant has submitted affidavits properly prepared and executed in support of his continuous residence during the requisite period. Regarding the rent receipts, counsel asserted that it was beyond the applicant's control that the receipts are no longer verifiable, due to the lengthy passage of time and difficulties in obtaining corroborative evidence. Counsel asserted, "it is highly likely that the receipts were issued out of order simply because the applicant's landlord at the time did not care to follow a normal pattern for whatever reason." Regarding the Form G-325A, counsel asserted:

Pleas [sic] note that the question on Form G-325A, what the applicant indicated was only his "address" outside the U.S. for more than one year, which was Kapurthan, Punjab, India from birth to July 1987, the applicant did not state that he was residing at that address during the statutory period. This question is distinctively different than the question above where it asked the applicant to list all the "addresses" for his "residences" for the last five years. You have misinterpreted the question intended on Form G-325A.

Counsel submitted a letter dated August 16, 2007, from [REDACTED] and [REDACTED] of [REDACTED] who indicated that the applicant has been attending services at the center since 1981.

The U.S. Citizenship and Immigration Services (USCIS) has determined that affidavits from third party individuals may be considered as evidence of continuous residence. See *Matter of E-- M--*, supra. In ascertaining the evidentiary weight of such affidavits, USCIS must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E-- M--*, supra, the affidavits would not necessarily be fatal to the applicant's claim, if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony provided. The statements issued by counsel have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through May 4, 1988, as he has presented contradictory and inconsistent documents, which undermines his credibility.

The employment affidavit from [REDACTED] failed to include the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the

affiant also failed to 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. In addition, the applicant did not claim on his Form I-687 application employment as a mechanic helper.

and failed to state the applicant's place of residence during the requisite period, provide any details regarding the nature of their relationship with the applicant or the basis for their continuing awareness of the applicant's residence. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim.

Counsel's argument regarding the Form G-325 has no merit. Counsel has not provided an explanation why the applicant "maintained an address" in India from May 1964 to July 1987 during the time he was purportedly residing in the United States. The Form G-325A undermines the credibility of the applicant's claim to have continuously resided in the United States from prior to January 1, 1982, through July 1987 and tends to establish that the applicant utilized documents in a fraudulent manner in an attempt to support his claim of residence in the United States prior to July 1987.

The letters from . have little evidentiary weight or probative value as they do not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, the affiants do not explain the origin of the information to which they attest. Furthermore, the applicant did not list any affiliation with a religious organization during the requisite period at item 34 on his Form I-687 application.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

Given the credibility issues arising from the documentation provided by the applicant, it is determined that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982 and resided in this country in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant 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