

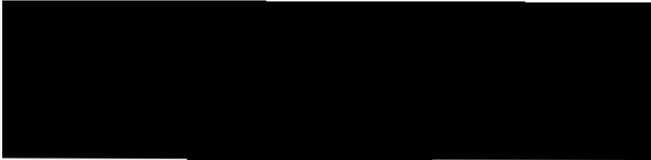
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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



L2

FILE:

MSC 02 166 62605

Office: TAMPA

Date:

MAR 18 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.

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 in Tampa, Florida. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application on the grounds that the applicant failed to establish that he entered the United States before January 1, 1982, resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and was continuously physically present in the United States from November 6, 1986 through May 4, 1988.

On appeal, counsel asserts that the director did not properly evaluate the evidence and did not state why he found the evidence submitted by the applicant not credible and insufficient to establish his eligibility for legalization under the LIFE Act. In counsel's view, the documentation in the record is sufficient to establish that the applicant meets the continuous residence and physical presence requirements 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 Trinidad and Tobago who claims to have lived in the United States since December 1980, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on March 15, 2002.

In a Notice of Intent to Deny (NOID), dated June 26, 2006, the director cited inconsistencies between the applicant’s testimony at his LIFE interview on August 8, 2003, and other documentation in the record regarding his initial date of entry into the United States, his continuous residence and continuous physical presence in the country during the requisite periods for LIFE legalization. The director indicated that these inconsistencies, together with substantive deficiencies applicable to all of the affidavits in the record, undermined the credibility of the applicant’s claim of continuous residence and continuous physical presence in the United States during the requisite periods for LIFE legalization. The applicant was granted 30 days to submit additional evidence.

In response to the NOID counsel submitted an affidavit from the applicant with some explanations for the evidentiary deficiencies and inconsistencies cited in the NOID, asserts that he finds no inconsistencies in the record and contends that the evidence of record is sufficient to establish the applicant's eligibility for legalization under the LIFE Act.

On April 28, 2007, the director issued a decision denying the application on the ground that the information 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 and did not state why he found the evidence submitted by the applicant insufficient to establish his eligibility for legalization under the LIFE Act. In counsel's view, the documentation in the record is sufficient to establish that the applicant meets the continuous residence and physical presence requirements 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 entered the United States before January 1, 1982, and was continuously resident and continuously physically present in the United States during the requisite periods for LIFE legalization consists of the following:

- A photocopy of a residential lease agreement between the applicant and [REDACTED] and [REDACTED] as landlords, dated July 22, 1987 for the lease period beginning July 22, 1987 to August 1, 1988.
- Two photocopied receipts with handwritten notations of the applicant's name, one with partially legible notation bearing a handwritten date that appears to be February 16, 1981, and the other dated October 2, 1987.
- Photocopies of bank statement from Richmond Hill Savings bank, dated November 6, 1987 and March 4, 1988, addressed to the applicant at [REDACTED] [REDACTED] Ozone Park, New York with notation on the statement "name shown for mailing purposes only."

- A photocopy of a New York Telephone bill dated December 1, 1987, and a photocopy of electric bill dated December 29, 1987, both addressed to the applicant at [REDACTED], Ozone Park, New York. Three fill-in-the-blank affidavits all dated December 2, 1991, from individuals who claim to have known the applicant resided in the United States from December 1980.

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

The file contains documentation that calls into question the veracity of the applicant's claim that he entered the United States in December 1980, resided continuously in the country in an unlawful status from before January 1, 1982 through May 4, 1988, and was continuously physically present in the country from November 6, 1986 through May 4, 1988. For example, a copy of the applicant's expired passport shows that he was issued a passport in Trinidad and Tobago on January 21, 1982, and a multiple entry non-immigrant B-1/B-2 visa at The United States Embassy in Port-of-Spain on November 23, 1982, valid indefinitely, which the applicant used to enter the United States through New York on December 20, 1982. Records from United States Immigration and Naturalization Services (INS) shows that the applicant entered the United States on three other occasions – January 17, 1986, August 6, 1986, and November 15, 1990. A copy of the applicant's marriage certificate shows that the applicant was married in Curepe, Trinidad and Tobago on July 14, 1984. A copy of the birth certificate of the applicant's daughter shows that the applicant was residing in Trinidad in 1985 when his daughter was born on January 10, 1985 and when he registered the birth of his daughter on February 5, 1985. The applicant was notified by the director of the discrepancies in the record and was given an opportunity to submit rebuttal information. The applicant responded, however, but did not submit any objective evidence in support of his assertion. 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 record reflects that the applicant submitted some evidence that may establish that he resided and was physically present in the United States during part of the required periods for legalization under the LIFE Act. The photocopied bank statement from Richmond Hill Savings Bank dated November 6, 1987 and March 4, 1988, is credible evidence that the applicant maintained an account with the bank but is not persuasive evidence of his continuous residence and continuous physical presence during the requisite periods. However, the photocopies of the New York Telephone bill dated December 1, 1987 and a photocopy of an electric bill dated December 29, 1987, both addressed to the applicant at [REDACTED], Ozone Park, New York, as well as the photocopied residential lease agreement between the applicant, [REDACTED] and [REDACTED] as landlords of [REDACTED] Ozone Park, New York,

dated July 22, 1987, for the lease period from July 22, 1987 to August 1, 1988, are credible evidence that the applicant resided in the United States in 1987 and thereafter, but is not credible evidence of the applicant's continuous residence and continuous physical presence in the country for the years prior to 1987.

The two photocopied rental receipts in the record have handwritten notations of the applicant's name with no date stamps or other official markings to verify the dates they were written. While the receipt dated October 2, 1987 listed an address for which rent was collected, the receipt that appears to bear the date of February 16, 1981, does not list an address. Since photocopied documents can be easily forged or altered and no original of the receipts is in the file, the photocopied rental receipts have little probative value.

The affidavits in the record – all dated December 2, 1991 – from individuals who claim to have rented an apartment to or otherwise known the applicant during the 1980s, all have fill-in-the-blank format with no personal input by the affiants. Considering the length of time they claim to have known the applicant – in all cases since December 1980, the affiants provide remarkably few details about the applicant's life in the United States such as where he worked and the extent of their interactions 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 relationships with the applicant in the United States during the 1980s. The statement by [REDACTED] a resident of [REDACTED] stating that he used to sublet an apartment to the applicant and his wife is inconsistent with information provided by the applicant on the Form I-687 (application for status as a temporary resident) dated December 16, 1991. The applicant did not list the Seaford, New York address as one of his addresses 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, and his continuous physical presence in the United States from November 6, 1986 through May 4, 1988.

For the reasons discussed above, the AAO concludes that the applicant has failed to establish that he entered the United States before January 1, 1982, resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and was continuously physically present in the United States from November 6, 1986 through May 4, 1988, as required under section 1104(c)(2)(B)(i) and (C)(i)(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.