

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

L2

**MAY 04 2009**

FILE:

MSC 01 289 60012

Office: PHILADELPHIA

Date:

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, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

On appeal, counsel for the applicant asserts that the applicant has submitted evidence that demonstrates his residence in the United States throughout the requisite period. Counsel submits additional evidence on appeal.

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 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.

In the Notice of Intent to Deny (NOID), dated May 24, 2006, the director stated that the applicant had failed to submit evidence demonstrating his continuous unlawful residence in the United States during the requisite period. The director noted that the applicant had submitted questionable affidavits in an attempt to establish the requisite continuous residence. The director granted the applicant thirty (30) days to submit additional evidence.

In his denial notice, dated February 27, 2007, the director denied the application based on the reasons stated in the NOID. The director noted that the applicant responded to the NOID, but failed to overcome the reasons for denial stated in the NOID. The director also noted that in response to an October 27, 2005 request for evidence the applicant submitted the birth certificates for his five children. The director determined, however, that the applicant provided questionable birth certificates for two of his children, [REDACTED] and [REDACTED].

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 from prior to January 1, 1982, through May 4, 1988. The record reflects that the applicant submitted numerous affidavits, letters, and other evidence, to support his Form I-485 application. The AAO has reviewed the entire record as it pertains to the requisite period. Here, the submitted evidence is not relevant, probative, and credible.

Contrary to counsel's assertion, the record indicates that the applicant has submitted questionable documentation. The applicant claims that he entered the United States in October 1981, and since his arrival, during the requisite period he departed once, to Pakistan, in August 1987, and returned to the United States in September 1987. In support of his application, the applicant submitted several affidavits and letters attesting to his continuous residence in the United States since October 1981. However, the record of proceedings contradicts his claim of continuous residence. The applicant submitted questionable birth certificates for two of his children, [REDACTED], and [REDACTED]. The birth certificates indicate that these two children were born, as twins, on July 6, 1988. According to the applicant, the birth of these children coincides with his visit to Pakistan during August – September 1987. The record, however, contains an affidavit, attested to on July 13, 1992, from [REDACTED], the applicant's wife, which the applicant provided in support of his application

for Advanced Parole, wherein [REDACTED] attests that she had five (5) children from the marriage to the applicant. In her affidavit [REDACTED] attested that [REDACTED], a girl, was nine (9) years old, and [REDACTED], a boy, was six (6) years old. Based on [REDACTED] affidavit these children could not have been born in July 1988; rather the affidavit indicates that her daughter, [REDACTED] was born in 1983 (approximately), and [REDACTED] her son, was born in 1986 (approximately). It is noted that the applicant has submitted a questionable application as he indicated on his Form I-687 application, signed on March 31, 1990, that [REDACTED] was born in 1987, and there is no indication on his Form I-687 application that he had a child named [REDACTED]. It is also noted that in her affidavit, [REDACTED] lists three other children, but does not indicate that any of her children are twins. Yet, the birth certificates that the applicant provided for [REDACTED] and [REDACTED] indicate that these children were born on the same day, July 6, 1988. Indications are that these birth certificates are false. The applicant cannot avoid the record he has created. The evidence of record, as it pertains to the dates of birth of [REDACTED], and [REDACTED], points to the applicant's presence in Pakistan which contradicts the applicant's claim that he had been residing in the United States since October 1981.

These discrepancies cast considerable doubt on whether the applicant's claim that he has been in the United States since October 1981 is true, and whether the documentation, including affidavits, that the applicant submitted in support of his claimed residence are genuine. The applicant has failed to submit any reliable independent, corroborative, contemporaneous evidence to rebut the contradicting evidence in the record. 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. It is incumbent upon the 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status during the requisite period.

The applicant has, therefore, failed to establish that he resided in continuous unlawful status in the United States from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act. 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.