

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 MS2090
Washington, DC 20529-2090

PUBLIC COPY



U.S. Citizenship
and Immigration
Services

L2

FILE: [REDACTED] Office: NEW YORK Date: MAY 05 2009
MSC 02 144 61393

IN RE: Applicant: [REDACTED]

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:
[REDACTED]

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 Director, New York, 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 requests that the application be reconsidered on humanitarian reasons. Counsel asserts the evidence submitted is sufficient to establish the applicant's continuous residence in the United States during the requisite period. Counsel provides copies of documents that were previously submitted in support of the appeal.

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:

- An affidavit from [REDACTED] who indicated that from December 1981 to October 1984, he provided full financial support including room and board to the applicant. The affiant asserted that the applicant is his Godchild and that he taught him the trade of a jeweler during this period of time.
- A letter dated January 30, 1989, from a medical doctor, [REDACTED] of Brooklyn, New York, who indicated that the applicant has been his patient since 1983.
- A letter dated February 10, 1991, from the president of Comite Civico Ecuatoriano Inc., in Jackson Heights, New York, who attested to the applicant's residence in the United States since 1981 and to his membership at the club.
- An undated statement from [REDACTED] of Acosta Jewelers, Inc. in New York City, who indicated that he has known the applicant since 1983 through jewelry work and that he always accompanied [REDACTED]
- An affidavit from [REDACTED], who indicated that the applicant has been residing with her since 1985 in Brooklyn, Jackson Heights, Elmhurst, Woodside, and Queens, New York.
- An affidavit from [REDACTED] who indicated that he met the applicant in 1983 at his place of employment. The affiant asserted that the applicant used to accompany [REDACTED] who was also employed at the same firm. The affiant asserted that he has remained in contact with the applicant since that time.
- An affidavit notarized January 21, 1993, from [REDACTED] who indicated that he has known the applicant for nine years. The affiant asserted that he and the applicant met while playing soccer at the Freshmeadow Park and at the Ecuadorian Club.
- Affidavits from [REDACTED] and [REDACTED] who indicated that they were introduced to the applicant through [REDACTED] in 1981 and 1982, respectively and have kept in touch with the applicant since that time.

- An affidavit from [REDACTED], who indicated that he met the applicant in 1982 at a social reunion and has kept in touch with the applicant since that time.
- Letters from [REDACTED] president of E.L. Tool & Die Co., Inc. who indicated that the applicant had been in employed from March 1985 to October 1997.
- Affidavits from [REDACTED] and [REDACTED] who indicated that they met the applicant in 1982 and 1983, respectively, in New York and he has remained in contact with the applicant since that time.
- An affidavit from [REDACTED], who indicated that she was a coworker of the applicant at E.L. Tool & Diego Inc., from 1985 to 1997.

The applicant also submitted additional affidavits and documents; however, they will not be considered as they serve to attest to the applicant's physical presence and residence in the United States subsequent to the requisite period.

On June 26, 2007, the director issued a Notice of Intent to Deny, which advised the applicant that the affidavits submitted appeared to be neither credible nor amenable to verification and that no evidence was submitted demonstrating that the affiants had direct personal knowledge of the events testified to in their respective affidavits.

The applicant was given 30 days in which to submit a response. The director, in denying the application, noted that the applicant had failed to submit a response to the notice. The record, however, reflects that a response was issued prior to the issuance of the director's decision. As such, the response will be considered on appeal.

Counsel, in response, asserted that the applicant came to the United States before 1982 and has submitted sufficient documents, which were affidavits of circumstances from individuals who were able to testify to the applicant's residence and employment during the requisite period. Counsel provided copies of documents that were previously submitted.

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 should be analyzed to be determine 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.

The employment letters 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.

[REDACTED] indicated that the applicant has been his patient since 1983, but neither appointment notices nor receipts, which would add credibility to the affiant's claim, were provided by the applicant.

The letter from Comit  Civico Ecuatoriano Inc., has little evidentiary weight or probative value as it does not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, the affiant does not explain the origin of the information to which he attests. Furthermore, the applicant did not list any affiliation with a club or 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).

The evidence must be evaluated not by the quantity of evidence alone but by its quality. The remaining affiants' statements provided do not provide detailed evidence establishing how they knew the applicant, the details of their association or relationship, or detailed accounts of an ongoing association establishing a relationship under which the affiants could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period. To be considered probative, an affiant's affidavit must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. The affidavit must contain sufficient detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of the facts asserted. The affidavits provided by the affiants do not provide sufficient detail to establish that the witness had an ongoing relationship with the applicant for the duration of the requisite period that would permit the applicant to know of the applicant's whereabouts and activities throughout the requisite period.

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.

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 record reflects that on November 21, 1997, a Form I-130, Petition for Alien Relative, was filed on behalf of the applicant by his spouse. Accompanying the Form I-130, is a Form I-485 application¹ and a Form G-325A, Biographic Information, signed by the applicant on October 22, 1997. The applicant indicated on his Form G-325A that he resided in his native country, Pakistan, from March 1967 to January 1995. It is noted that on his LIFE application filed on February 21, 2002, the applicant indicated that he was single and indicated that he had never applied for permanent resident status before.

These inconsistencies further raises serious questions regarding the authenticity of the supporting documents submitted with the LIFE application and tend to establish that the applicant utilized the affidavits and letters in a fraudulent manner in an attempt to support his claim of *continuous* residence in the United States during the requisite period. As such, the applicant has irreparably harmed his own credibility as well as the credibility of his claim of continuous residence in the United States for requisite period

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.

¹ This Form I-485 application was assigned alien registration number [REDACTED]