

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

FILE:

MSC 02 018 61098

Office: LOS ANGELES

Date: **MAY 06 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.

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 Los Angeles, California. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish 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.

On appeal, counsel asserts that the director did not properly evaluate the documentation in the record. In counsel's view, the evidence of record is sufficient to establish that the applicant entered the United States before January 1, 1982, and resided continuously in the United States in an unlawful status through the period 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 Peru who claims to have lived in the United States since march 1980 or 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on October 18, 2001.

In a Notice of Intent to Deny (NOID), dated June 18, 2007, the director indicated that the applicant had not submitted sufficient credible evidence to establish his continuous unlawful residence in the United States during the requisite period for LIFE legalization. The applicant was granted 30 days to submit additional evidence.

The applicant did not respond to the NOID, and on August 20, 2007, the director issued a decision denying the application based on the reasons stated in the NOID.

On appeal, counsel asserts that the director did not properly evaluate the documentation in the record. In counsel’s view, the evidence of record is sufficient to establish that the applicant entered the United States before January 1, 1982, and resided continuously in the United States in an unlawful status through the period for LIFE legalization. Counsel further asserts that the applicant

filed a response to the NOID, which the director did not take into consideration in his decision to deny the application.¹

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 resided continuously in the United States in an unlawful status through May 4, 1988, consists of the following:

- A letter of employment from [REDACTED], personal clerk at Cleaning & Plumbing Specialists, Inc. in Signal Hill, California, dated September 7, 1990, stating that the applicant was employed from February 10, 1984 to the present (1990), as a casual worker when work is available and that the applicant earned from \$5.75 to \$8.50.
- A series of affidavits – dated in 1990, and 2007, from individuals who claim to have employed, rented rooms, or otherwise have known the applicant in the United States during the 1980s.
- A photocopied envelope addressed to the applicant at [REDACTED], [REDACTED], Santa Ana, California, from an individual in Lima, Peru, bearing a foreign postmark that appears to read, 24 April 1982.
- Various merchandise and retail receipts, some in photocopied form, with handwritten notations of the applicant's name, and/or address, dated from 1981 to 1988.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility. The documents submitted are not probative and not credible.

¹ The record reflects that the applicant filed a late response to the director's NOID and submitted additional documentation with the response. The AAO will evaluate all documentation submitted by the applicant, including the additional documentation submitted in response to the NOID in its review of this appeal.

The letter of employment from [REDACTED], personal clerk at Cleaning & Plumbing Specialists, Inc. in Signal Hill, California, does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because the letter did not provide the applicant's address during the periods of employment and did not indicate whether there were periods of layoff, which seems likely since the employment was described as "casual worker when work is available." The letter did not indicate whether the information about the applicant's employment was taken from company records, and did not indicate whether such records are available for review. Nor was the letter supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed during any of the years indicated. Thus, the employment letter has limited probative value. It is not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988, as required for legalization under the LIFE Act.

The affidavits in the record – dated in 1990, and 2007 – from individuals who claim to have employed, rented rooms to or otherwise have known the applicant in the United States during the 1980s, have minimalist or fill-in-the-blank formats with little personal input by the affiants. Considering the length of time they claim to have known the applicant – in most cases since 1981 – the affiants provide remarkably few details about the applicant's life in the United States and their interaction with him over the years. The affidavits are not 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 affidavits from [REDACTED] and [REDACTED] claiming to have rented rooms to the applicant from 1981 to 1990, is not supplemented by rental agreements, rental receipts or utility bills, evidencing that the affiants resided at the addresses during the periods claimed and that they in fact rented rooms to the applicant as claimed. The affidavit from [REDACTED] claiming that the applicant was employed from April 13, 1981 to July 31, 1984, is not supplemented by any tax records from the employer demonstrating that the applicant actually was employed as stated during the period claimed. 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.

The various retail and merchandise receipts dated from 1981 through 1988 have handwritten notations with no date stamps or other official markings to verify when they were written. Some of the receipts bear the applicant's name and no address. Some of the receipts are photocopies and no originals are in the file, and some of the receipts appear not to be genuine. For example, the receipt from [REDACTED] dated February 12, 1982, was addressed to the applicant at [REDACTED] in Santa Ana, however, the applicant indicated on the Form I-687 (application for status as a temporary resident) he filed in October 1991, that he did not reside at that address until January 1988. For the reasons discussed above, the receipts have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

As for the photocopied envelope in the record, it is not genuine because the envelope was addressed to the applicant at [REDACTED] Santa Ana, California, and bears a postmark that appears to read April 24, 1982. The applicant indicated on the Form I-687 that his address during the year 1982 was [REDACTED] Santa Ana, California. Additionally, there is no United States postal stamp to verify that the envelope was received and processed in the United States. Accordingly, the letter envelope has no probative value as evidence of the applicant's continuous residence in the United States during the requisite period for adjustment of status under the LIFE Act.

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.*

In view of the myriad evidentiary discrepancies discussed above, the AAO is also skeptical of the two photocopied photographs which the applicant indicated were taken somewhere in Huntington Beach, California in 1979. As the record reflects, the applicant claimed two possible entry dates in March 1980 or March 1981. The applicant was not even in the United States in 1979, therefore the photographs have no probative value.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish 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, as required under section 1104(c)(2)(B)(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.