

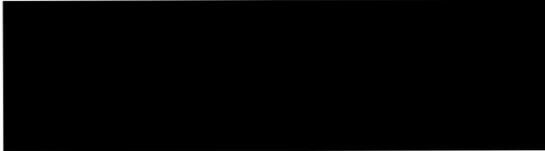
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
Washington, DC 20529-2090



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



L2

FILE: [REDACTED] Office: NEW YORK Date: **MAY 08 2009**
MSC 02 085 65665

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 asserts that the Notice of Intent to Deny contained information of fabricated questions and answers that supposedly occurred during the interview, but no such discussion transpired. Counsel asserts that a response to the notice was hand-delivered to a Service Officer prior to the issuance of the director's decision. Counsel states that the evidence submitted is sufficient to support the applicant's claim for relief.

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.

A Form I-94, Departure Record, indicating the applicant lawfully entered the United States on September 27 1987, with a B-2 visa. The applicant was granted two extensions through December 27, 1988.

A copy of the applicant's passport reflecting that a B-2 multiple entry non-immigrant visa was issued in July 1983 in Alexandria, Egypt and that the applicant lawfully entered the United States on July 31, 1983.

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] of Manalapan, New Jersey, who indicated that the applicant resided with him at his family home at [REDACTED] Oceanside, New York, from September 1981 to May 1985.
- An affidavit notarized June 26, 1990, from [REDACTED] of Staten Island, New York, who indicated that he is the applicant's landlord and that the applicant has resided at [REDACTED], Staten Island, New York since October 1987.
- A letter dated September 13, 1990, from [REDACTED] a medical doctor in Jersey City, New Jersey, who indicated that the applicant was examined at his office on August 17, 1983 and December 8, 1987.
- A letter dated June 15, 1990, from [REDACTED] in Brooklyn, New York, who indicated that the applicant was employed as a part-time maintenance worker from November 1981 to December 1985.

On November 6, 2006, the director issued a Notice of Intent to Deny, which advised the applicant that pursuant to a telephone conversation on April 3, 2003, with the New York and New Jersey telephone operator and directory, the addresses of [REDACTED] and [REDACTED] 'does not relate to [the affiant] between January 1st, 1982 and May 4th 1988.'" The director advised the

applicant that the affidavits were the same, which were provided by an agent or an individual and that the applicant's testimony and the affidavits had been impugned.

It is noted that the Notice of Intent to Deny also contains long passages of testimony that appear to be verbatim transcriptions of the applicant's interview. However, this testimony is not found elsewhere in the record. Accordingly, the AAO finds that there is insufficient evidence in the record to support the director's findings that the applicant's oral testimony was inconsistent with other information in the record, and these findings are withdrawn.

The director, in denying the application, determined that the applicant failed to respond to the Notice of Intent to Deny. A review of the documentation submitted by counsel on appeal clearly reflects that a response was submitted prior to the issuance of the director's Notice of Decision of April 23, 2007. As such, the response will be considered on appeal.

In response, counsel argued that the director made no attempt to contact the affiants by telephone and that [REDACTED] in his affidavit, did not indicate that the applicant resided in Manalapan, New Jersey. Counsel asserted that the similar form of affidavits did not impugn their efficacy as the substance of the papers is what is of importance, not the format. Counsel asserted that the applicant had submitted specific affidavits with personal knowledge of his whereabouts and the applicant's testimony was consistent with his application.

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. Although the director did not verify the authenticity of the affidavits submitted by the affiants through telephone contact, the AAO does not view the affidavits discussed above as substantive enough to support a finding that the applicant *continuously* resided in the United States since prior to January 1, 1982 through May 4, 1988.

The employment letter 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.

There is a significant portion of time that has not been accounted for, namely June 1985 to September 1987. The applicant claims to have been employed by other employers and to have also resided in Jersey City, New Jersey and Astoria, New York during the requisite period. However, he has not provided any evidence to support his claims. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

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 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.