



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

L2

FILE:

MSC 02 043 60134

Offices: NEW YORK CITY

Date: NOV 20 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.

Perry J. Rhew
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 New York City. It is now on appeal before the Administrative Appeals Office (AAO). 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 submitted by the applicant in support of his application. In counsel's view, the documentation in the record is sufficient to establish that the applicant meets the continuous residence requirement for legalization under the LIFE Act. Counsel requested a copy of the Record of Proceedings (ROP) and indicated that he will submit a brief/evidence within 30 days of receiving the ROP. The record reflects that the ROP has been processed and that counsel submitted a brief following receipt of the ROP but did not submit additional evidence of the applicant's continuous residence in the United States with his brief. The AAO will consider the record as complete and will adjudicate the application based on the evidence in the record.

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).

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 applicant, a native of Turkey who claims to have lived in the United States since May 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on November 12, 2001.

In a Notice of Intent to Deny (NOID) dated August 28, 2006, the director cited inconsistencies in the record regarding the applicant’s initial entry into the United States and his continuous unlawful residence in the country. The director indicated that the inconsistencies undermined the applicant’s credibility, and granted him 30 days to submit additional evidence.

The applicant failed to submit a response to the NOID. On January 4, 2007, the director issued a Notice of Decision denying the application on the grounds stated in the NOID.

On appeal counsel asserts that the director did not properly evaluate the documentation submitted by the applicant in support of his application. In counsel’s view, the documentation in the record is sufficient to establish that the applicant meets the continuous residence requirement for legalization under the LIFE Act. Counsel did not submit additional documentation with the appeal.

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 meets the continuous unlawful residence requirement in the country during the required period consists of letters and affidavits from individuals who claim to have employed, resided with or otherwise known the applicant in the United States during the 1980s as well as photocopies of envelopes.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility.

The AAO notes that although the applicant claims that he entered the United States before January 1, 1982 and resided continuously in the country through the requisite period for legalization under the LIFE Act, other documentation in the record indicates otherwise. On two prior Form I-687s the applicant completed on April 20, 1992 and on October 5, 1993, the applicant indicated that he resided continuously in the United States from entry (1981) through the requisite period except for one brief trip to Canada from July 17 to July 20, 1987. The applicant did not indicate any other trips outside the United States during the 1980s. The record however, contains a copy of the applicant's expired passport indicating that the applicant had been previously issued a passport in Istanbul, Turkey, on December 26, 1984. The applicant did not submit any objective evidence to show that he entered the United States in May 1981. As the applicant has not established any other trips outside the United States to Turkey following his alleged entry in 1981, the issue date on the passport strongly suggests that the applicant was in Turkey in 1984 when the passport was issued and not residing in the United States as claimed.

The contradictory information discussed above, and the lack of objective documentation in the record to justify or explain the contradictions, cast serious doubt on the veracity of the applicant's claim that he entered the United States before January 1, 1982, as well as the credibility of other documentation in the record attesting to the applicant's residence in the United States from before January 1, 1982 through May 4, 1988.

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 envelopes in the record addressed to the applicant at the address he claims in the United States bearing postmark dates within the requisite period (1981, 1982 and 1984) do not bear United States Postal Service stamps or other markings to show that the envelopes were received and processed in the United States before delivery to the applicant at the address indicated. Thus, the envelopes have little probative value as credible evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

As for the affidavits in the record from individuals who claim to have resided with or otherwise known the applicant resided in the United States during the 1980s, they have minimalist or fill-in-the-blank formats with very little input by the affiants. Considering the length of time they claim to have known the applicant – in most cases since 1981 – the affiants provided very few details about the applicant's life in the United States and the nature and extent of their interactions with him over the years. The affiants do not have direct personal knowledge of the events and circumstances of the applicant's residency in the United States. The affiants did not submit documentation to establish their own identities and residence in the United States during the requisite period.

Additionally, 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. For all the reasons discussed above, the AAO finds that 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. Thus, it must be concluded that the applicant has failed to establish that he meets the continuous unlawful residence requirement under the LIFE Act.

Based on the foregoing analysis of the evidence, and the applicant’s overall lack of credibility, 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.