

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 01 340 60076

Office: MIAMI

Date:

**OCT 27 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 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, Miami, Florida, 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 since before January 1, 1982 through May 4, 1988 as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, the applicant's former counsel reiterates the applicant's claim of residence in this country for the required period and asserts that the applicant submitted sufficient evidence in support of such claim. The applicant's former counsel provides copies of previously submitted documentation 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).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982 to May 4, 1988, the submission of any other relevant document including affidavits is permitted pursuant to 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 "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.* At 80. 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. *Id.*

Even if the director has some doubt as to the truth, if the petitioner 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 or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (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 or petition.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing his continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Act, on June 18, 1991. At part #33 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant listed [REDACTED] in Miami Springs, Florida from August 1979 to February 1980, [REDACTED] in North Miami, Florida from February 1980 to March 1986, and [REDACTED] in North Miami, Florida from March 1986 through at least the end of the requisite period on May 4, 1988.

Subsequently, the applicant filed his Form I-485 LIFE Act application on September 5, 2001.

In support of his claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted a State of Florida Driver License issued on March 6, 1987. Although the applicant listed a different address of residence for this date on the Form I-687 application, this contemporaneous document is considered to be sufficient proof that he resided in the United States from March 1987 through the end of the requisite on May 4, 1988. Consequently, the examination of the applicant’s claim of residence in this country for the requisite period shall be limited to that period from prior to January 1, 1982 up to March 1987.

The applicant provided a letter dated June 13, 1991 that bears the letterhead of Aeronaves Del Peru International Cargo Airlines in Miami, Florida and the signature of [REDACTED] Mr. [REDACTED] declared that the applicant worked for this company from September 1981 to the date the letter was executed on June 13, 1991. However, [REDACTED] failed to provide either the applicant’s address of residence during that period was employed by this company or relevant information relating to the availability of business records reflecting the applicant’s employment and failed to state the applicant’s duties of employment as required by 8 C.F.R. § 245a.2(d)(3)(i).

The applicant included three letters dated June 14, 1991, January 1993, and June 9, 2006 respectively. The letters dated June 14, 1991 and January 1993 both bear the letterhead of Faucett Peruvian Airlines in Miami, Florida. The letter dated June 14, 1991 contains an illegible signature, while the letter dated January 1993 is signed by [REDACTED] who listed his position as vice president for maintenance and engineering. The letter dated June 9, 2006 is signed by [REDACTED] who listed his position as vice president for cargo and operations of Faucett Peruvian Airlines from 1991 to 1997. The individual who signed the letter dated June 14, 1991 stated that this enterprise employed the applicant from July 1981 to October 1989. In the letter dated January 1993, [REDACTED] noted that Faucett Peruvian Airlines employed the applicant since 1974 and that his current position was a mechanic performing general aircraft maintenance. [REDACTED] declared that the applicant worked for this company in the capacity of maintenance supervisor from July 1981 to May 1997 in his letter dated June 9, 2006. Nevertheless, neither the individual who signed the letter dated June 14, 1991 nor [REDACTED] nor [REDACTED] provided either the applicant's address of residence during that period was employed by this company or relevant information relating to the availability of business records reflecting the applicant's employment as required by 8 C.F.R. § 245a.2(d)(3)(i).

The applicant submitted an affidavit signed by [REDACTED], as well as a declaration signed by [REDACTED]. While these individuals attested to the applicant's residence in the United States for the period in question, their testimony was general and vague and lacked sufficient details and verifiable information to corroborate the applicant's residence in this country for the requisite period.

The applicant provided three affidavits bearing the letterhead of Gladisco USA Inc., in Miami, Florida all of which are signed by [REDACTED] who listed his position as manager. In these three affidavits, [REDACTED] stated that the applicant rented apartments located at [REDACTED], in Miami Beach, Florida from January 1981 to November 1987 and [REDACTED], in Miami Beach, Florida from December 1987 through at least the end of the requisite period on May 4, 1988 from this company. The applicant included thirty two corresponding original rent receipts for these addresses ranging in dates during the requisite period from January 2, 1981 to February 1, 1988. Regardless, these rent receipts and Mr. [REDACTED] testimony that applicant resided at these addresses directly contradicted the applicant's testimony at part #33 of the Form I-687 application that he resided at [REDACTED] in Miami Springs, Florida from August 1979 to February 1980, [REDACTED] in North Miami, Florida from February 1980 to March 1986, and [REDACTED] in North Miami, Florida from March 1986 through at least the end of the requisite period on May 4, 1988.

The applicant included a photocopied identification card in the applicant's name from the Garrett Technical Training School at Airesearch Manufacturing Co., in Phoenix, Arizona that bears an expiration date of June 9, 1979. However, the probative value of this document is minimal because the identification card does not contain a photograph of the applicant and it is a photocopy rather than an original. "In judging the probative value and credibility of the evidence

submitted, greater weight will be given to the submission of original documentation.” 8 C.F.R. § 245a.2(d)(6).

The director determined that the applicant failed to submit sufficient evidence demonstrating his residence in the United States in an unlawful status for the requisite period. Therefore, the director concluded that the applicant was ineligible to adjust to permanent residence and denied the Form I-485 LIFE Act application on June 12, 2006.

On appeal, counsel reiterates the applicant’s claim of residence in this country for the required period and asserts that the applicant submitted sufficient evidence in support of such claim. Counsel’s remarks on appeal regarding the sufficiency of evidence the applicant submitted to demonstrate his residence in this country during the period in question have been considered. However, the supporting documents contained in the record do not contain specific and verifiable testimony to substantiate the applicant’s claim of residence in the United States for the period in question. In addition, the record contains testimony and supporting documents that directly contradicted the applicant’s own testimony relating to his claim of residence in this country since prior to January 1, 1982.

The absence of sufficiently detailed supporting documentation and the conflicting and contradictory testimony cited above seriously undermine the credibility of the applicant’s claim of residence in this country for the requisite period, as well as the credibility of the documents submitted in support of such claim. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he has resided in the United States for the requisite period by a preponderance of the evidence as required under both 8 C.F.R. § 245a.12(e) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant’s reliance upon documents with minimal or no probative value and conflicting nature of testimony contained in the record, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988 as required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis.

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