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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
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FILE:



Office: GARDEN CITY

Date: **OCT 28 2009**

MSC 02 250 66459

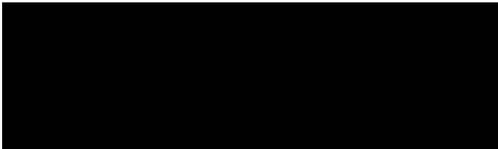
IN RE:

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, Garden City, New York, and is now before the Administration Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined 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 and, therefore, denied the application.

On appeal, counsel reiterates the applicant's claim of residence in this country for the required period and asserts that the applicant had submitted sufficient evidence in support of such claim.

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 March 6, 1990. At part #33 of this Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant listed “ [REDACTED] ” in the Bronx, New York from February 1981 to August 1982, “ [REDACTED] ” in Brooklyn, New York from August 1982 to February 1985, “ [REDACTED] ” in Los Angeles, California from February 1985 to June 1987, and “ [REDACTED] ” in Los Angeles, California from July 1987 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 June 7, 2002.

In support of his claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted rent receipts dated November 6, 1982 and March 2, 1987, as well as a receipt dated February 3, 1986 for two tires from Scorpion Tire Service in Los Angeles, California. Although the director concluded that a review of public and business records revealed that the Scorpion Tire Service was a fraudulent company in a notice of intent to deny issued on July 3, 2007, this conclusion is clearly in error as the records relied upon show that this enterprise had utilized the name, Scorpion Tire Service, as a “Doing Business As” or “DBA” since April 21, 1982. Nevertheless, the probative value of these three receipts is limited as all information relating to the applicant is handwritten.

The applicant provided two original envelopes and a postcard all of which were represented as having been mailed from Pakistan to the applicant at addresses in this country during the requisite period. However, the envelopes and postcard have no probative value as none of these documents contain a discernible postmark to determine when such items had been mailed.

The applicant included a declaration that is signed by [REDACTED] Mr. [REDACTED] stated that the applicant “moved to my apartment sometimes[sic] in February 1981 and stayed with

me till August 1982 at [REDACTED] Woodside, New York, N.Y. 11377.” Mr. [REDACTED] testimony that the applicant resided at this address from February 1981 to August 1982 directly contradicted the applicant’s testimony at part #30 of the Form I-687 application that he resided at [REDACTED] in the Bronx, New York from February 1981 to August 1982.

On appeal, counsel submits two affidavits signed by [REDACTED] and [REDACTED] in support of the applicant’s claim of residence for the requisite period. While the affiants attest to the applicant’s residence in the United States for the period in question, their testimony is general and vague and lacks sufficient details and verifiable information to corroborate the applicant’s residence in this country for the required period.

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. While counsel asserts that USCIS should contact the individuals that provided supporting documents and verify their testimony, counsel fails to advance any compelling reason as to why any verification attempts should be made in light of the doubtful probative value of the general and vague testimony contained in the applicant’s evidence of residence. In addition, the record contains testimony from one affiant 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 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 eligibility.