

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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

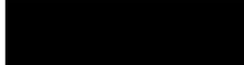


**U.S. Citizenship
and Immigration
Services**



L2

FILE:



Office: CHARLOTTE

Date:

AUG 05 2010

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.

A handwritten signature in black ink, appearing to be "Perry Rhew".

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, Charlotte, North Carolina. The denial of the LIFE Act application was appealed but then rejected as untimely filed. This case shall be reopened pursuant to the regulations at 8 C.F.R. § 103.5(b) which provide that the AAO may of its own volition (sua sponte) reopen or reconsider a decision under section 245A of the Immigration and Nationality Act (Act), and by extension section 1140 of the LIFE Act, and the previous dismissal shall be withdrawn.¹ The matter is now before the Administrative Appeals Office (AAO) on appeal.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 reiterates his claim of residence in this country for the required period and asserts that he had submitted sufficient evidence in support of such claim. The applicant objects to the director's failure to acknowledge his response to the notice of intent to deny. The applicant includes copies of previously submitted documentation in support of his 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 "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

¹ The director rejected the appeal as untimely filed. On motion, counsel submits evidence that the appeal was timely filed, but due to error, appeared to have been untimely. The AAO accepts the evidence of timely filing.

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 19, 1990. 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 Los Angeles, California from April 1981 to February 1983, “[redacted]” in Los Angeles, California from March 1983 to July 1985, “[redacted] Pl.” in Los Angeles, California from August 1985 to September 1987, and “1050 S. [redacted]” in Los Angeles, California from October 1987 to the date the application was filed on March 19, 1990. In addition, at part #34 of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, business, etc., the applicant listed “None.”

Subsequently, the applicant filed his Form I-485 LIFE Act application on June 6, 2002.

In support of his claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted affidavits that are signed by S [redacted] and [redacted]. While all of these affiants attested to the applicant’s residence in the United States for the period in question or a portion thereof, their testimony lacked sufficient details and verifiable information to corroborate the applicant’s residence in this country for the requisite period. Furthermore, all of the affiants attested to the applicant’s attendance at church despite the fact that the applicant failed to list any affiliation or association with a church at part #34 of the Form I-687 application.

The applicant included three photocopied envelopes that are postmarked December 12, 1985, December 18, 1985, December 26, 1985, and April 3, 1987. The envelopes postmarked December 12, 1985, December 18, 1985, and December 26, 1985 list the applicant's address as [REDACTED] in Flushing, New York, while the envelope postmarked April 3, 1987 lists the applicant's address [REDACTED] in Flushing, New York. The addresses of residence attributed to the applicant on these envelopes does not correspond with his testimony that he resided at [REDACTED] in Los Angeles, California from August 1985 to September 1987 at part #33 of the Form I-687 application. The applicant attempted to explain this discrepancy by asserting that he had used the address of a friend in Flushing, New York as his mailing address because he was moving so much while living in Los Angeles, California during the requisite period. However, the applicant's explanation cannot be considered as reasonable in light of the fact that he testified he lived at four regular and fixed addresses in Los Angeles, California during the requisite period on the Form I-687 application. Specifically, the applicant testified that he lived at [REDACTED] in Los Angeles, California from April 1981 to February 1983, [REDACTED] in Los Angeles, California from March 1983 to July 1985, [REDACTED] in Los Angeles, California from August 1985 to September 1987, and [REDACTED] in Los Angeles, California from October 1987 though at least March 19, 1990 at part #33 of the Form I-687 application.

The applicant provided two photocopied photographs that are date stamped April 28, 1985 and May 4, 1985, respectively. While the photograph date stamped April 28, 1985 depicts a group of people on the sidewalk of street in New York, New York, it cannot be determined whether the applicant is amongst these people. In addition, the photocopied photograph date stamped May 4, 1985 has no probative value as the specific location depicted in this photograph cannot be discerned.

The applicant submitted an original Korean language Family Census Register that is accompanied by a certified translation. This translation lists the applicant as the "Family Head" and indicates that his permanent address was [REDACTED] in South Korea as of November 12, 1986. Although the applicant's Korean attorney included a statement indicating that this address was the address of the applicant's father when he died on November 3, 1986 and the applicant's presence in Korea was not required for him to receive his inheritance under Korean law, he did not submit any independent evidence to corroborate this statement. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The fact that the certified translation of the Family Census Register indicated that the applicant's permanent address was in Seoul, South Korea as of November 12, 1986 seriously undermines the applicant's claim of continuous residence in the United States for the period in question.

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 March 21, 2006. Although the director stated that the applicant failed to submit a response to a notice of intent to deny that was previously issued on February 15, 2006, the applicant's response to this notice has been considered and supporting documents analyzed in the discussion above.

On appeal, the applicant reiterates his claim of residence in this country for the required period and asserts that he submitted sufficient evidence to support such claim. However, as has been discussed above, the record is absent credible supporting documents containing specific and verifiable testimony to substantiate the applicant's residence in this country from prior to January 1, 1982. In addition the record contains conflicting testimony and evidence relating to critical elements of the applicant's claim of residence in the United States since prior to January 1, 1982.

The absence of sufficiently detailed supporting documentation and existence of conflicting testimony and evidence 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, 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.