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



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: NEW YORK

Date:

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MSC 03 001 61377

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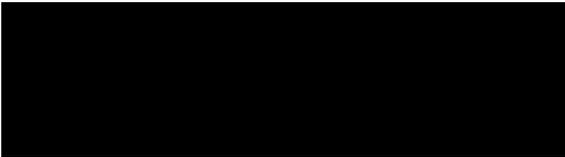
Applicant:



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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

*Elizabeth McCormack*

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

The director denied the application after determining that 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. The director noted that the applicant failed to respond to a Notice Of Intent To Deny (NOID) and denied the claim based on the reasons set forth in the NOID. In the NOID, the director noted that the applicant had signed a sworn statement before a United States immigration officer stating that he first entered the United States in April or May of 1982. The director further noted in the NOID that the applicant submitted an I-94 Departure Record which shows an entry date of October 13, 1981, that appears to have been altered from October 13, 1991.

On appeal, counsel submits a brief stating that the applicant submitted affidavits attesting to his residence in the United States throughout the requisite period, and that the director applied the wrong evidentiary standard in considering those affidavits. Counsel asks that the application be approved.

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 through May 4, 1988. See § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b).

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 period, 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 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 states 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 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 (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.

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).

Here, the applicant submitted evidence that is not relevant, probative and credible. The applicant submitted the following information in support of his claim that he resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988:

- An affidavit from [REDACTED] wherein the affiant stated that he has known the applicant since 1984 when the applicant lived in New York, and that he has stayed in touch with the applicant since that time.
- An affidavit from [REDACTED] wherein the affiant stated that he has known the applicant since 1981 when the applicant lived in New York, and that he has stayed in touch with the applicant since that time.

The affidavits provided do not provide detailed evidence establishing how the affiants knew the applicant, the details of their association or relationship, or detailed accounts of an ongoing association establishing a relationship under which the affiants could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period covered by the applicant's Form I-687. To be considered probative, affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. The affidavits must contain sufficient detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of the facts asserted. The affidavits submitted by the applicant, therefore, are not deemed probative and are of little evidentiary value.

The applicant has also provided inconsistent information about his residence in the United States. The applicant claims to have first arrived in the United States in 1981. On February 14, 1994, however, the applicant signed a sworn statement before a United States immigration officer stating that he first arrived in the United States in April or May of 1982. The applicant also completed a Customs Declaration in February of 1994 stating that he had resided in the United States since 1982. The affidavits submitted by the applicant lack probative value not only because they lack sufficient detail to establish the facts attested to, but because the applicant has provided contradictory information relating to his presence in the United States during the requisite period. The inconsistencies noted have not been explained and are material to the applicant's claim because they have a direct bearing on the applicant's activities and whereabouts during the requisite period. 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 unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any

aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

- The applicant provided a statement signed by [REDACTED] wherein [REDACTED] stated that he has known the applicant since 1981, and that the applicant was employed by [REDACTED] at his residence as a handy man from 1981 to 1983.

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 employment statement submitted by the applicant fails to provide the information required by the above-cited regulation. The statement does not: show periods of layoff (or state that there were none); state the applicant's duties; declare whether the information provided was taken from employer records; or identify the location of such employer records and state whether they are accessible or in the alternative why they are unavailable. As such, the employment statement is not deemed probative and is of little evidentiary value.

Thus, it is found that the applicant has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988. Accordingly, the applicant is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

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