

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



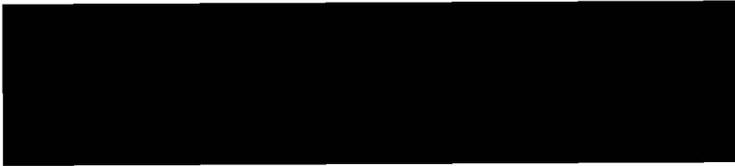
FILE: [Redacted] Office: NEW YORK Date:  
MSC 03 165 60682

JAN 08 2010

IN RE: Applicant: [Redacted]

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, New York, 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, 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 provides copies of previously submitted documentation as well as new affidavits in support of the appeal.

A review of the record reveals that counsel has previously requested a copy of the record on three separate occasions. The record reflects that the first request was administratively closed with [REDACTED] as failure to comply on July 15, 2002. The second request was completed with [REDACTED] and a copy of the record mailed to counsel on August 23, 2003. The third request was completed with [REDACTED] and a copy of the record mailed to counsel on August 5, 2008.

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 regulation at 8 C.F.R. § 245a.2(d)(3)(v) states that attestations by churches, unions, or other organizations to the applicant's residence by letter must: identify applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

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 previously file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (Act). Subsequently, on March 14, 2003, the applicant filed his Form I-485 LIFE Act application.

In support of his claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted an affidavit that is signed by [REDACTED] Mr. [REDACTED] stated that the applicant had lived with him in his apartment since November 1981 and that he initially supported the applicant because he was too young to work. The applicant would have been 14 years old in 1981. [REDACTED] declared that the applicant subsequently began supporting himself, married his sister, and that the applicant and his sister continued to live with him in his

apartment through the date the affidavit was executed on November 15, 1989. According to the applicant's I-687, his wife was living in Columbia as of February 1, 1990. While [REDACTED] attested to the applicant's residence in the United States for the period in question, his 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. Further, it is noted that [REDACTED] has acknowledged that he is the applicant's brother-in-law. Consequently, the probative value of [REDACTED] testimony is limited as he has admitted that he is related to applicant as his sister is the applicant's wife and that he has a direct interest in the outcome of this proceeding rather than being disinterested third party witnesses.

The applicant included an affidavit signed by [REDACTED] who asserted that he was owner of the apartment building located at [REDACTED] in Jackson Heights, New York. [REDACTED] noted that his tenant, [REDACTED], approached him in November 1981 to request that the applicant be allowed to move into [REDACTED] apartment in this building. [REDACTED] stated that he agreed to this arrangement and that the applicant continued to live in [REDACTED] apartment until September 1989. Nevertheless, [REDACTED] failed to provide any documentation such as business records, rent receipts, leases, contracts, or real estate records to support either his assertion that he was the owner of the listed premises or the claim that he entered into an arrangement allowing the applicant to reside at this address for the entire requisite period.

The applicant provided a letter containing the letterhead of St. Bartholomew's Rectory in Elmhurst, New York that is signed the [REDACTED] Rev. [REDACTED] provided the applicant's address of residence and noted that the applicant attended religious services at this church from 1981 through the date the letter was executed on December 20, 1989. The applicant included a letter containing the letterhead and seal of Our Lady of Sorrows Church in Corona, New York that is signed the [REDACTED] Rev. [REDACTED] listed the applicant's address of residence and noted that the applicant was personally known to priests at the church and that he attended services at this church from November 1986 through the date the letter was executed on November 20, 1989. [REDACTED] testimony is inconsistent with the information provided by the applicant on his Form I-687 as to the dates of affiliation. Further, neither [REDACTED] or [REDACTED] listed their official capacity or title with the respective churches, stated how they knew the applicant, or established the origin of the information to which they attested as required under 8 C.F.R. § 245a.2(d)(3)(v).

The applicant submitted affidavits signed by [REDACTED] and [REDACTED] respectively, both of whom attested to the applicant's absence from the United States in August and September of 1987 when he traveled to Colombia to visit his sick mother. This testimony is inconsistent with that provided by the applicant on his Form I-687 wherein he stated in 1990 that his last entry into the United States was in 1981, and therefore has little probative value.

The applicant included three affidavits that are signed by [REDACTED], and [REDACTED], respectively. The affiants testified that they had met the applicant through a mutual friend and had personal knowledge that he resided in Queens, New York from November 1981 through the date the affidavits were executed on November 27, 1989. Although these affiants

attested to the applicant's residence in the United States for the period in question, their testimony lacked sufficient details and verifiable information to substantiate the applicant's residence in this country for the requisite period.

The applicant provided an affidavit dated November 19, 1990, which contained the letterhead of [REDACTED] at the South Street Seaport in New York, New York and is signed by [REDACTED] who listed his position as president. [REDACTED] declared that the applicant had been employed at this enterprise as a busboy from 1986 through the date the affidavit was executed on November 19, 1990. Regardless, [REDACTED] failed to provide the exact date such employment began, the applicant's address of residence during his employment with 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 a letter dated April 20, 2007, which contained the letterhead: [REDACTED] signed by [REDACTED]. [REDACTED] stated that [REDACTED] founded Centro Medico in 1970 and that the applicant was [REDACTED] patient from March 1982 to April 1985. [REDACTED] noted that she was [REDACTED] secretary during this period and she remembered the applicant. [REDACTED] stated that [REDACTED] died in 1996 and that she was the only person currently in the office to have direct contact with the applicant. [REDACTED] asserted that Centro Medico was presently operated by different doctors who did not retain records relating to the period in question. It is incongruous for a medical clinic to use letterhead with the name of a deceased doctor. More importantly, [REDACTED] does not state how she dates her contact with the applicant in the absence of medical records; therefore, the probative value of her testimony is nominal.

The applicant included a photocopy of an envelope containing a Colombian postage stamp that was represented as having been mailed from Colombia to the applicant at the address in this country that he claimed to have resided both during and after the required period. Nevertheless, this document has no probative value as the date of the postmark is not discernible.<sup>1</sup>

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 August 27, 2007.

On appeal, the applicant submits affidavits that are signed by [REDACTED], and [REDACTED]. While the affiants attest to the applicant's residence in the United States for either the entire period in question or a portion thereof, 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.

---

<sup>1</sup> It should be noted that subsequent to the filing of the appeal, the AAO requested that the applicant provide the original of the photocopied envelope in a notice dated December 11, 2008. The record shows that the applicant provided the original envelope but that this postmark was also indiscernible.

Counsel's remarks on appeal regarding the sufficiency of evidence the applicant submitted to demonstrate his residence in this country during the requisite period 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.

The absence of sufficiently detailed supporting documentation seriously undermines 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 the inconsistencies in the evidence, it is concluded that he has failed to establish continuous residence 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.

Beyond the decision of the director, the applicant is inadmissible and therefore ineligible for permanent resident status for this additional reason. The record shows that the applicant was found inadmissible and was expeditiously removed on February 21, 1998, when he sought admission to this country. As a result of his removal on February 21, 1998, the applicant is inadmissible under section 212(a)(9)(A)(i) of the Act because he reentered this country within five years of his date of removal without prior permission. Although this ground of inadmissibility is waivable, the applicant is otherwise ineligible so no purpose would be served by applying for a waiver.

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