

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

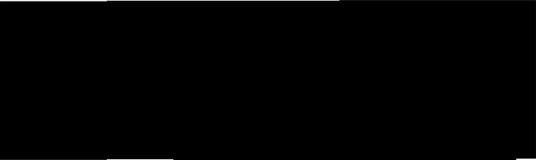
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L2



FILE: [Redacted]
MSC 02 010 61155

Office: NEW YORK

Date: **MAR 01 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:
[Redacted]

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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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.

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 as he found that none of the affidavits purporting to attest to the applicant's residence in the United States during the requisite period were credible and amenable to verification. The director also found evidence in the record suggesting that the applicant first entered the United States in 1987. Taken the submitted evidence together with other evidence in the record, the director concluded that the applicant had failed to establish by a preponderance of the evidence that he met the requirements to adjust status under the LIFE Act.

On appeal, counsel for the applicant filed a Freedom of Information Act (FOIA) request and stated that he would submit a brief 30 days after receiving the complete record of proceedings. The record reflects that the FOIA request was processed and completed on July 24, 2009.¹ Counsel submitted a brief. Counsel generally contends in his brief that the applicant has provided sufficient credible evidence showing his continuous residence in the United States from before January 1, 1982 through May 4, 1988. The AAO has reviewed all of the evidence and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.²

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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 periods, 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).

¹ NRC2008042331.

² The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also*, *Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

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.* 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 applicant 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 applicant 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.

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).

The primary issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

During his interview, the applicant stated that he first entered the United States in 1981 by ship without inspection and claimed that he had resided continuously in the United States throughout the requisite period. As evidence of his assertions, the applicant submitted photocopies of receipts from [REDACTED] and [REDACTED] photocopies of 14 envelopes with stamps; and five affidavits.

Concerning the envelopes with stamps, the director noted that none of the postmarks on the stamps were from the United States Postal Service. None of the envelopes were received by or delivered to the applicant in the United States during the requisite period, according to the director. The AAO finds that these envelopes are not probative as evidence of the applicant’s presence or residence in the United States during the requisite period.

The record contains copies of two receipts from [REDACTED] dated in 1982 and 1984, a copy of a receipt from National Bank of Pakistan dated in 1981, a copy of a S&L Construction Company receipt dated in 1986, and a copy of a WIZ receipt dated in 1983. The receipts provide minimal probative value as evidence of the applicant’s claim of continuous residence in the United States throughout the requisite period. However, they fail to establish the applicant’s

continuous residence in the United States throughout the statutory period, namely in the years 1985 and 1987.

The affidavits from [REDACTED] and [REDACTED] both claim that they have known the applicant since 1981; however, neither affiant described with any detail how he first met the applicant in the United States or how he dates the beginning of his acquaintance with the applicant in 1981. Neither affiant states where the applicant lived and worked or what the applicant did with his time during the requisite period. The lack of detail is significant, considering that both affiants claim they have known the applicant since 1981. Neither affidavit is probative as evidence of the applicant's residence in the United States since before January 1, 1982.

The affidavit from [REDACTED] indicates that the applicant is a good friend and that he let the applicant stay in his home for a couple of days in November 1981. However, he fails to state with specificity the events and circumstances of the applicant's life and whereabouts during the requisite period. Simply stating that the applicant has lived in the United States since before January 1, 1982 without providing any detail about the events and circumstances of the applicant's life in the United States during the requisite period does not establish the reliability of the assertions and does not establish the applicant's continuous residence in the United States throughout the requisite period. To be considered probative and credible, witness 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. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. The affidavit will be given nominal weight.

The affidavit from [REDACTED] declares that he accompanied the applicant to an immigration office in New York on January 25, 1988, to file the application for temporary resident status. This statement is inconsistent with [REDACTED] previously submitted affidavit in which he stated that he took the applicant to an immigration office in May 1987 to file the application. The inconsistency casts doubt on the veracity of his assertions. No weight will be accorded to either affidavit.

The affidavit from [REDACTED] states that he has known the applicant since 1986 and that the applicant resided at [REDACTED] in New York from September 1987 to October 1989. This information, however, is inconsistent with the applicant's personal declaration where he claims that he began residing on [REDACTED] in 1990. [REDACTED], additionally, fails to provide detailed information about the events and circumstances of the applicant's life during that period specified in his affidavit. The affidavit lacks probative value as evidence of the applicant's residence in the United States during the requisite period.

Further, a review of the record reveals that the applicant was stopped by immigration and customs officers on February 23, 1993, as he attempted to enter the United States without a visa

or any advance parole. During the interview, the applicant stated that he had been living in the United States since 1987. This evidence, when combined with other submitted evidence in the record, fails to establish by a preponderance of the evidence that the applicant resided in the United States continuously from before January 1, 1982 through May 4, 1988.

The noted inconsistencies coupled with the lack of detail in the affidavits and the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period detract from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the inconsistencies in the record and the lack of credible supporting documentation, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period 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.