

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

L2



FILE: [REDACTED] MSC 02 011 62648

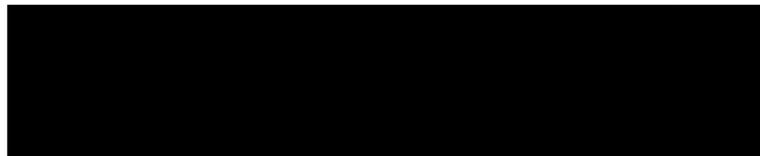
Office: CHICAGO

Date: DEC 20 2007

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. The file has been returned to the National Benefits Center. 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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

On appeal, counsel contends that the applicant submitted sufficient documentary evidence of his presence in the United States during the requisite period. Counsel submitted additional evidence in support of the instant application.

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).

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

The 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 before January 1, 1982, through the duration of the requisite period. Here, the submitted evidence is not relevant, probative, and credible.

In the Notice of Intent to Deny, dated March 31, 2003, the director stated that there had been no evidence of the existence of primary or secondary evidence to establish his claim. The director determined that the submitted affidavits and other documentation failed to meet the requirements under the LIFE Act. The director granted the applicant thirty (30) days to submit additional evidence. The record reflects that no additional evidence was received.

In the Notice of Decision, dated December 23, 2004, the director determined that applicant was ineligible to adjust status under the LIFE Act, as well as Section 245(a)(12) of the INA. The director stated that the applicant failed to provide any primary or secondary evidence to establish his presence in the United States before January 1, 1982, through May 4, 1988. The director cited 8 C.F.R. § 103(b). It is noted that the applicant did submit secondary evidence in the form of affidavits.

On January 20, 2005, counsel filed a timely appeal and submitted additional evidence in support of the applicant's claim. Counsel asserts that, due to the unavailability of primary evidence, the submitted secondary evidence demonstrates by a preponderance of the evidence that the applicant was physically present in the United States during the requisite period.

The record reflects the following evidence:

1. An undated statement by [REDACTED], who stated that he/she has personally known the applicant since 1981. They met at the community cultural center. The affiant stated that the applicant resided at [REDACTED] in Chicago, Illinois. The affiant provided his address, which is the same as the applicant's address.

2. An undated statement by [REDACTED] who stated that the applicant resided at [REDACTED] [REDACTED] from 1981 to 1990. The affiant also stated that he met the applicant through the applicant's family. The affiant provided his street address, which is the same as the applicant's address.
3. A January 10, 2003, letter by Rev. [REDACTED] founder/pastor of India Mission Telugu Methodist Church, on church letterhead. The affiant stated that the applicant had been a member of the church since 1981 with his wife and son, [REDACTED]. The applicant and his wife took "less paying job(s) to support the family" and left their son at the Church to be supervised. The affiant also wrote an updated letter, dated January 24, 2005, which repeated some of the above information.
4. An October 28<sup>th</sup>, 2002, notarized affidavit by [REDACTED], who stated that the applicant was a tenant in the garden apartment located at [REDACTED] Chicago, Illinois, from April 1988 to September 1995. The applicant was a hardworking person and paid the rent on time. The affiant provided an updated, notarized affidavit, dated January 26, 2005, which indicated that the applicant was a family friend since childhood. In 1982, the applicant came and met him at [REDACTED] in Chicago. The applicant worked some odd jobs. In 1985, the affiant met the applicant again and gave him a job as Store Manager at California Groceries at [REDACTED] in Chicago. The applicant also rented the affiant's apartment until 1995. The affiant provided his address.
5. A February 10, 1988, letter by [REDACTED], M.D., who stated that the applicant suffered from backache due to herniated nucleus pulposus from November 1, 1987. The affiant stated that the applicant is now under his treatment. The affiant advised that the applicant be on complete bed rest and traction until March 1, 1988. The affiant provided his address and telephone number.
6. An undated letter by [REDACTED] y (illegible handwriting), who stated that the applicant and [REDACTED] resided with him at [REDACTED] from July 1987 to March 1988. The applicant was paying \$280.00 per month, including all utilities.
7. An undated letter by [REDACTED] who stated that the applicant, along with his wife and child, lived at [REDACTED] from September 1986 through September 1987. They shared a residence with the affiant. The applicant paid \$300.00 per month, including heat and utilities.

In a sworn affidavit, dated March 14, 1990, the applicant stated that he first entered the United States in September 1981 through the Mexican border. He also stated that he last departed the United States in June 1987 to India and returned on July 17, 1987. The record reflects a copy of the applicant's passport and a departure card, both containing an admittance stamp into the United States dated July 18, 1987. It is clear from the evidence in the record that the applicant was present in the United States in 1987. However, it is not clear from the evidence in the record that the applicant

entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

The affiant, [REDACTED], stated that he has known the applicant since 1981. Although not required, he did not include any supporting documentation of his identity or presence in the United States. The affiant did not indicate how he dated his acquaintance with the applicant or how frequently he saw the applicant. The absence of sufficiently detailed and consistent supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the affiant's credibility.

The affiant, [REDACTED] stated that the applicant resided at [REDACTED] in Chicago, Illinois, from 1981 to 1990. In a subsequent affidavit, dated October 28<sup>th</sup>, 2002, the affiant stated that the applicant resided at the same address from April 1988 to September 1995. No explanation was provided to explain this inconsistency. 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 applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The affiant also indicated that he met the applicant in 1982, gave the applicant a job and rented the applicant an apartment. However, the affiant did not provide any contemporaneous evidence to support the credibility of his claims. Although not required, the affiant did not include any supporting documentation of his identity or presence in the United States.

The affiant, Rev. [REDACTED] failed to show inclusive dates of membership, state the address where the applicant resided during membership period, include the seal of the organization impressed on the letter or the letterhead of the organization and establish the origin of the information being attested to as required by 8 C.F.R. § 245a.2(d)(3)(v).

The affiants, [REDACTED], M.D., [REDACTED] and [REDACTED], attest to the applicant's presence in the United States after September 1986. They do not establish the applicant entered before January 1, 1982, and continuously resided in an unlawful status up to the date of their acquaintances.

The applicant has not provided any verifiable, contemporaneous evidence of residence in the United States during the duration of the requisite period. Although not required, none of the affidavits included any supporting documentation of the affiant's identity or presence in the United States. The absence of sufficiently detailed and consistent supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this 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 applicant's reliance upon documents with minimal 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 the duration of the requisite period.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, he is ineligible for permanent resident status under Section 1104 of the LIFE Act.

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