



U.S. Citizenship
and Immigration
Services

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FILE: MSC 02 113 62553

Office: Chicago

Date: **APR 11 2006**

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. 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.

Robert P. Wiemann, Director
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 director concluded the applicant had not established that he had continuously and unlawfully resided in the United States during the entire qualifying period from January 1, 1982 through May 4, 1988 and, therefore, denied the application.

On appeal, counsel asserts that the application was “improperly administered.” Counsel submits a brief in which he questions the “reasoning” of the director’s decision and asserts that the evidence submitted “clearly” shows that the beneficiary has been present in the United States during the qualifying period.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish that he or she entered the United States before January 1, 1982 and resided in this country continuously in an unlawful status from before January 1, 1982 through May 4, 1988. *See* section 1104(c)(2)(B)(i) of the LIFE Act and the regulations at 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 periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. 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 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.

Here, the submitted evidence is not credible.

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 applicant submitted the following documentation to establish his residency during the qualifying period:

- A September 15, 2001 unsworn letter from [REDACTED] stating that he has known the applicant “for a long time during the year 1981 to 1984[.] I have seen him in Florida.”
- An August 29, 1986 letter from [REDACTED] in Wooddale, Illinois, notifying tenants that they would be responsible for certain plumbing problems.
- An October 7, 1986 letter terminating the applicant’s month-to-month lease with [REDACTED] which indicates that the applicant was under a month-to-month lease as early as January 1986 for an apartment in Addison, Illinois.
- A lease application from the applicant to [REDACTED]
- A lease agreement between the applicant and [REDACTED] for the period November 14, 1986 to October 31, 1987, and copies of two receipts from [REDACTED] dated October 18, 1986.
- A copy of a November 21, 1986 pre-inspection report for the Lombard, Illinois apartment rented from [REDACTED] for the period beginning November 14, 1986 to October 31, 1987.
- A June 10, 2003 letter from [REDACTED] stating that he examined and treated the applicant for cough and chest pains at his office at [REDACTED] in Chicago, Illinois in July 1981.

The applicant has submitted insufficient evidence to establish that it is more probable than not that he resided continuously in the United States prior to January 1, 1982 to May 4, 1988. The earliest contemporaneous documents relate to 1986. The unsworn letter from Mr. [REDACTED] is extremely vague as to the details of his meeting and association with the applicant, and therefore is not sufficiently corroborative evidence of the beneficiary’s presence in the United States prior to 1982.

Further, the letter submitted by Dr. [REDACTED] indicates that he is a pediatrician, and does not fully explain his medical treatment of the applicant, particularly for chest pains, as the applicant would have been close to 40 years of age at that time. Further, Dr. [REDACTED] stated that he treated the applicant at his office in Chicago in 1981, and identified the applicant’s address as [REDACTED] in Addison, Illinois. However, the applicant stated on his Form I-687, Application for Status as a Temporary Resident, dated March 21, 1990, that he resided at [REDACTED] in Florida City, Florida from January 1981 to July 1984, and at [REDACTED] in Addison, Illinois from August 1984 to October 1986. The applicant submitted no evidence to explain these inconsistencies. It is incumbent upon the petitioner 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, of course, 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 (BIA 1988).

As stated above, the inference to be drawn from the documentation depends in part on the extent of the documentation. The applicant has provided only seven documents, of which only two relate to the 1981-83 period. To the extent that he has any documentation for this period, it is wholly contradictory.

The director noted that the applicant submitted documentation showing that he entered the United States on December 1, 1984 pursuant to a B-2 visa as a temporary visitor. The director concluded that the applicant’s

entry into the United States under a valid visa classification is evidence that he did not live continuously in an unlawful status throughout the qualifying period. Counsel states that the regulations permit brief periods outside of the United States as not interruptive of continuous residence requirement.

The regulation at 8 C.F.R. § 245a.2 states in pertinent part:

(b) Eligibility. The following categories of aliens, who are otherwise eligible to apply for legalization, may file for adjustment to temporary residence status:

(9) An alien who would be otherwise eligible for legalization and who was present in the United States in an unlawful status prior to January 1, 1982, and reentered the United States as a nonimmigrant, such entry being documented on Service Form I - 94, Arrival-Departure Record, in order to return to an unrelinquished unlawful residence.

An applicant who has resided unlawfully in the United States, who returns by willful misrepresentation pursuant to a B-2 temporary visa to an unrelinquished unlawful residence, may satisfy the requirement of continuous unlawful residency, and we withdraw the director's intimation to the contrary. Nonetheless, the applicant has submitted sufficient evidence of his residency in the United States only since 1984. The applicant has not submitted sufficient credible evidence to establish that he resided in the United States prior to his December 1, 1984 entry.

The applicant has, therefore, failed to establish that he resided in continuous unlawful status in the United States from before January 1, 1982 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.