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U.S. Citizenship
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Services

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FILE:

MSC 02 232 63589

Office: LOS ANGELES

Date: DEC 08 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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, Los Angeles, and is now before the Administrative Appeals Office 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 from before January 1, 1982 through May 4, 1988. In particular, the director found that the applicant had submitted no evidence of residency for the period 1981 through 1984. Also, the director found that the applicant's testimony that he first departed from the United States in 1994 was inconsistent with the applicant's Form I-687, Application for Status as a Temporary Resident, which lists absences in September 1986 and August 1987.

On appeal, the applicant states that the information in his Form I-687 is inaccurate. The applicant contends that because he was of minor age in 1990, an "immigration specialist" completed his Form I-687 and included erroneous information. The applicant asserts that, after entering the United States in 1980, he did not depart again until 1994. The applicant also asserts that he has made "every possible attempt in order to provide . . . evidence of continuous presence for the specific years [of 1981-1984]." The applicant contends that because he and his family "moved around so much" in those years, he has been unable to submit more documentation of residency. The applicant submits photographs of himself that he claims were taken in the United States during the years 1983 through 1986.

An applicant for permanent resident status 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. 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. 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 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.

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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). 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. *Id.*

Here the applicant has failed to offer independent objective evidence that adequately explains and reconciles the inconsistencies in the record.

The applicant's Form I-687 does not contain the name of a preparer other than the applicant himself. The applicant has not provided specific information concerning the "immigration specialist" that he alleges included inaccurate information on this form. Copies of pages from the applicant's passport in the record contain stamps consistent with the information in the applicant's Form I-687 concerning an absence in 1987.

Furthermore, the director correctly observed that the record lacks evidence demonstrating that the applicant resided in the United States in the years 1981 and 1982 as claimed. The applicant has submitted a copy of the passport page indicating he entered the United States in December 1980, but no documentation showing he remained in the United States during the years 1981 and 1982. The applicant states that he is unable to provide such evidence because his family moved frequently during this time period, but he has failed to provide specific information concerning where he lived during this period and why no documentation is available. The applicant's Form I-687 lists only one address for the applicant during the period of 1981 to 1987.

As the applicant has failed to submit credible evidence of sufficient probative value demonstrating that he resided continuously in unlawful status in the United States from before January 1, 1982 through May 4, 1988, the applicant has not established eligibility to adjust status to Legal Permanent Resident status under section 1104 of the LIFE Act.

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