



U.S. Citizenship
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Services

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FILE:

MSC 02 071 65445

Office: HOUSTON

Date: NOV 09 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, 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, Houston, 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 observed that “under oath and in a sworn statement . . . [the applicant] advised that [he] departed the U.S. to Mexico in approximately 1984 . . . [and] remained in Mexico until after the amnesty period (May 4, 1988) when [he] reentered without inspection.” The director found that this testimony contradicted other information in the record and indicated an absence from the United States that was not “brief, casual and innocent.”

On appeal, counsel contends that the applicant has submitted sufficient independent evidence of residency and points to an affidavit submitted by the applicant in response to the Notice of Intent to Deny (NOID) in which the applicant indicates that the interview at which he gave the inconsistent testimony was stressful and that this stress caused him “to misspeak or misinterpret the questions asked.”

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 alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. 8 C.F.R. § 245a.15(c)(1).

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 record shows that prior to the applicant's interview on April 21, 2004, the applicant had claimed that he first entered the United States in October 1980, but had given no indication of whether he had departed since the time of that entry. The record also shows that the applicant signed a sworn statement at an April 21, 2004 interview in which he testified that he departed the United States in 1984 and did not return until after May 4, 1988. The statement also indicates that the applicant was represented by counsel at the interview, a fact that the applicant does not dispute. The applicant's explanation for such a significant discrepancy between his sworn testimony and other information in the record, particularly in light of the fact that the applicant had legal representation that could have reviewed and corrected the sworn testimony before the applicant signed the statement at his interview, is inadequate. The applicant submits an affidavit from [REDACTED] in which [REDACTED] claims to have been the applicant's employer and to have known the applicant resided in the United States since the year 1981. However, the applicant's I-687 does not list [REDACTED] as the applicant's employer at any period of time.

The applicant has failed to submit credible evidence of sufficient probative value to overcome doubts raised by his sworn statement that he departed from the United States in 1984 and did not return until after May 4, 1988. The AAO thus concurs with the director that the applicant has failed to prove continuous residence in an unlawful status for the entire period of before January 1, 1982 through May 4, 1988. Accordingly, 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.