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U.S. Citizenship
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FILE:

MSC 02 190 63039

Office: LOS ANGELES

Date: **SEP 28 2006**

IN RE:

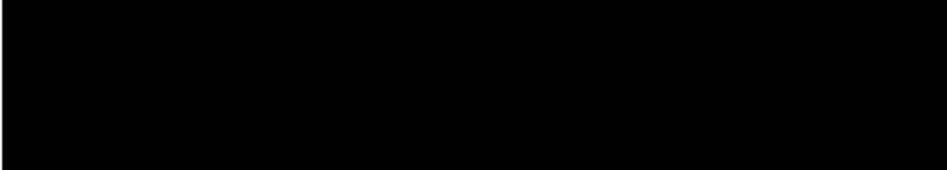
Applicant:



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, 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. The director found that the letters from the applicant's previous employers—submitted in response to the Notice of Intent to Deny (NOID) in an effort to resolve inconsistencies noted therein—did not conform to the regulations at 8 C.F.R. § 245a.2(d)(3)(i).¹ The director concluded that the applicant had not adequately resolved the inconsistencies discussed in the NOID, and therefore had not demonstrated by credible evidence that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the applicant received ineffective assistance of counsel because his previous attorney failed to advise him concerning the proper format of employment letters or the requirements for proving residency in the United States. Counsel contends that because of the ineffective assistance of counsel, the applicant was not given an opportunity to properly rebut the adverse evidence upon which the denial of his application was based. Counsel submits documentation indicating that the applicant has lodged a formal complaint against his former counsel with the State Bar of California.

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

¹ It is unclear from the record if the director gave any consideration to this evidence in making her decision. Nevertheless, the AAO will consider this evidence under the “any other relevant document” provision of 8 C.F.R. 245a.2(d)(3)(vi)(L).

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 relevant, probative, and credible.

Regardless of whether the applicant's former counsel provided the applicant with ineffective representation, the record shows that the applicant has made no attempt, either on appeal or at any other time, to resolve the inconsistency in the record he himself created: the applicant's representation on Form I-687 that he had been working for [REDACTED] from 1985 through the date he signed the form (January 25, 1990) and the omission from the form of any work history with the [REDACTED]

In his initial letter, and in his subsequent letter submitted in response to the NOID, [REDACTED] states that the applicant worked at the [REDACTED] from 1983 through 1987. However, [REDACTED] son of the owner of the [REDACTED], corrects the information he provided in his initial letter in his subsequent letter by stating that the applicant worked at the [REDACTED] from 1988 to 1990 (not from 1987 to 1989 as stated in his initial letter), and began working at the [REDACTED] in 1990. Even if the director had considered and accepted as factual the information provided in the second letters from [REDACTED] the inconsistency between this information and the applicant's representations on Form I-687 remains unresolved.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The record shows that the director gave the applicant notice of her intent to deny the applicant's application because of the aforementioned inconsistency. The AAO has considered all the evidence submitted by the applicant, the applicant's former counsel and the applicant's current counsel. The AAO finds that the applicant has been given sufficient opportunity—particularly through his current counsel on appeal—to resolve this inconsistency, but has failed to do so. As the applicant has failed to address significant concerns concerning the credibility of the evidence of residency he submitted, he has therefore not met his burden of proof in showing that he had continuously resided in the United States in an unlawful status from 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.