



U.S. Citizenship  
and Immigration  
Services

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FILE:

MSC 02 247 64608

Office: DENVER

Date: APR 25 2007

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, Denver, and is now before the Administrative Appeals Office (AAO) 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 observed that the applicant stated under oath at his interview that he left the United States in 1981 and did not return again until October 25, 1986. The director found that this testimony contradicted affidavits from the applicant's former employer and former roommate, and showed that the applicant had not maintained continuous residency.

On appeal, counsel asserts that the applicant misspoke at his interview as a consequence of "lack of sleep, general fatigue, and illness." Counsel contends that the applicant has submitted sufficient evidence showing that he departed the United States in June 1986, including a letter from the applicant submitted in response to the Notice of Intent to Deny (NOID) in which the applicant stated that he should have said he left in June 1986 rather than in June 1981 at his interview.

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 his testimony.

The record shows that the applicant testified at his April 7, 2003 interview that he first entered the United States in 1980, but departed the United States for Morocco in June 1981, not returning again until October 1986. This testimony contradicts the applicant's claim to have resided continuously from before January 1, 1982 through May 4, 1988 and is inconsistent with the evidence previously submitted by the applicant to substantiate that claim. The applicant does not dispute that he gave this testimony at his interview, but asserts that he misspoke because he was tired. In a letter submitted in response to the NOID, the applicant stated that he should have said that he departed in June 1986 at his interview. However, this statement contradicts the applicant's Form I-687, Application for Status as a Temporary Resident, which shows the dates of this absence as September 25, 1986 to October 25, 1986. Furthermore, if the applicant did depart in June 1986 and return in October 1986, then he was absent from the United States for a period in excess of 45 days and is not to be regarded as having resided continuously in the United States as a consequence.

The applicant has failed to submit credible evidence to overcome doubts raised by his sworn testimony that he departed from the United States in June 1981 and did not return again until October 1986. The evidence submitted by the applicant and counsel in response to the NOID and on appeal contains information that further contradicts other evidence in the record and shows an absence exceeding 45 days. The applicant thus has failed to prove continuous residence in an unlawful status for the 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.