



U.S. Citizenship
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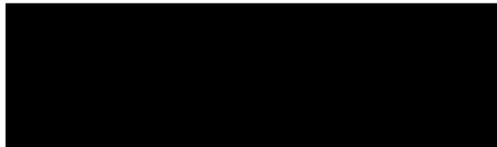
Office: New York

Date:

AUG 29 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:

SELF-REPRESENTED

PHOTIC COPY

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, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and was continuously physically present in the United States from November 6, 1986, through May 4, 1998.

On appeal, the applicant's counsel submitted a brief attempting to explain inconsistencies in the application and submitted additional evidence to substantiate the applicant's claim of continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and continuous physical presence in the United States from November 6, 1986, through May 4, 1988.¹

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

The regulation at 8 C.F.R. § 245a.15(c)(1) defines “continuous unlawful residence” as follows:

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. (Emphasis added.)

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).

¹ Although a Notice of Entry of Appearance as Attorney or Representative (Form G-28) has been submitted, the individual is not authorized under 8 C.F.R. § 292.1 or § 292.2 to represent the applicant. See <http://www.usdoj.gov/eoir/profcond/chart.htm> Therefore, this decision will be furnished to the applicant only.

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 applicant 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 applicant 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.

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).

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to 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. Here, the submitted evidence is not relevant, probative and credible.

The record contains the following documents relevant to the application:

- A February 4, 2002 sworn statement by the applicant that he lived at [REDACTED]
- A September 30, 2005 sworn statement by the applicant that he lived in the United States since 1981.
- April 30, 1986 and November 16, 1986 postmarked envelopes sent by the applicant to [REDACTED]
- An August 23, 1990 affidavit and an undated notarized letter by [REDACTED] who stated that the applicant resided in the United States since August 15, 1981, and lived with him at [REDACTED]

- A March 26, 2004 notarized letter by [REDACTED] who noted that the applicant lived in his apartment at [REDACTED] from 1980 through March 20, 1990.
- A March 22, 1993 affidavit by [REDACTED] who stated that the applicant lived in the United States since August 1981 and lived on the same block at [REDACTED] York, NY.
- An October 7, 2005 notarized letter by [REDACTED] who noted that he has known the applicant for more than 23 years.
- A January 11, 2005 sworn statement by [REDACTED] who stated that he had known the applicant since 1981. He further noted that the applicant lived at [REDACTED] until 1990 and then moved to [REDACTED].
- A March 11, 1991 sworn letter from [REDACTED] who stated that the applicant lived in same apartment building. The return address on the letter was [REDACTED].
- An April 3, 2004 sworn letter in an illegible signature from Ca\$h R Plus, which stated that the applicant had been connected to the company since 1981.
- A January 10, 1991 affidavit of witness by [REDACTED] who noted that the applicant resided at [REDACTED] from November 1981 to February 1990 and at [REDACTED] from March 1990 to the date of the instant letter.
- An October 3, 1990 letter by [REDACTED] who stated that the applicant lived at [REDACTED] 1986.
- A December 20, 1990 affidavit of witness by [REDACTED] who stated that he met the applicant at a Thanksgiving Day party in 1981 and that the applicant lived at [REDACTED] from November 1981 to February 1990 and [REDACTED] Jersey from March 1990 to present the date of the instant letter.
- An October 17, 1990 letter from INCA Express that the applicant lived at [REDACTED] and used the company's services since August 1986 to send things to his wife.
- An April 7, 1994 letter by office manager [REDACTED] Restaurant, who stated that the applicant lived at [REDACTED] while employed from February 12, 1984 to March 15, 1986 as a kitchen helper.

- An October 13, 1989 letter by owner [REDACTED] of [REDACTED] Restaurant, who noted that the applicant lived at [REDACTED] and that the applicant was employed from February 19, 1986 to June 13, 1987.
- An undated letter from [REDACTED] who stated that he had known the applicant since 1982 and that the applicant had worked for him since 1990.
- An October 26, 1989 letter from manager [REDACTED] Marriott Corporation, who stated that the applicant was employed from September 19, 1986 to June 29, 1987 and June 16, 1989 to the date of the instant letter.
- An October 26, 1989 letter by the applicant stating that he worked at [REDACTED] from July 1987 to May 1989. The applicant stated that he "cannot get job letter as owner is impossible to find."
- A May 14, 1993 letter from [REDACTED] of The Church of Saint Matthew and Saint Timothy, who stated that the applicant had been attending church since October 1981.
- An October 11, 1989 letter from [REDACTED] of Sacred Heart of Jesus Church, who stated that the applicant lived in the parish since 1981.
- An October 10, 1989 letter from Fr. [REDACTED] of Grace Episcopal Church, who stated that the applicant lived at [REDACTED] and worked as assistant Sexton in [REDACTED] and [REDACTED] from November 30, 1981 to January 20, 1986.
- An August 6, 1990 letter from [REDACTED] Grace Episcopal Church, who stated that he had known the applicant since 1981, and that the applicant served in his parish in different capacities.
- A September 12, 1990 letter by [REDACTED] who stated that the applicant was a patient since 1984 due to a lumbo-sacral sprain.
- Various receipts from 1981 to 1988, including a July 30, 1984 copy of a receipt to [REDACTED]
- A copy of the applicant's passport from the Republic of Ecuador issued in Quito on November 28, 1979. On page 32 of the passport, there is an application received stamp dated December 24, 1987 from the United States Embassy Quito.
- Pay stubs dated April 9, 1987 and April 16, 1987.

In the Notice of Intent to Deny dated December 30, 2004, the director noted several inconsistencies in the evidence the applicant submitted in order to prove he continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and was continuously physically present in the United States from November 6, 1986, through May 4, 1998.

The director noted contradictory information in each of the applicant's three Form I-687s dated November 13, 1989, November 28, 1990, and July 22, 1993. The discrepancies related to the applicant's employment history and address history. The applicant submitted affidavits that also contradicted his employment and address history listed on the Forms I-687. The director further noted omissions from all three Form I-687s, specifically the applicant's son born in Ecuador on August 18, 1988 and an arrest on February 5, 1986, at San Ysidro, California, for attempting illegal entry into the United States.

In response, the applicant stated that the inconsistencies and omissions were due to preparer error. He stated that "the people who filled out all my papers made too many errors" and they only wanted money. The applicant submitted additional documentation to resolve the employment and address history inconsistencies. However, the applicant failed to address his arrest on February 5, 1986, at San Ysidro, California, for attempting illegal entry into the United States. The record reflects that the applicant also attributed the inconsistent Form I-687s to his own memory loss.

In the Notice of Decision dated August 10, 2005, the director determined that the documentation submitted was insufficient to overcome the grounds for denial. The documentation simply stated where and when the applicant lived and worked, but provided no explanation for the inconsistencies. The omission of the applicant's son due to preparer error was not credible as the applicant's attorney prepared all three Form I-687s. The director also determined that the applicant's memory loss was not a credible explanation as the Form I-687s had been completed prior to the alleged injury that caused the memory loss. More importantly, the applicant did not address his February 5, 1986 arrest for attempting illegal entry into the United States.

The record reflects that on February 5, 1986, the applicant was arrested at San Ysidro, California (Case [REDACTED] and charged with *deportation proceedings for attempting illegal entry* into the United States. The applicant used the alias [REDACTED]. In addition, the record reflects two prior arrests for attempting illegal entry into the United States. On September 29, 1975 in New York (Case [REDACTED], the applicant was charged with *deportation proceedings for entry without inspection*. On May 8, 1978 in California [REDACTED] the applicant was charged with *deportation proceedings for attempting illegal entry*.

On appeal, the applicant's counsel indicated that a brief would be submitted to clarify the conflicting evidence. The record reflects that neither the applicant nor counsel submitted a brief. Even if the applicant could overcome the contradictory information in his application, the applicant's credibility is damaged. The applicant stated that his only absence from the United States during the statutory period was from October 10, 1987 through November 25, 1987 when he visited Ecuador. However, the applicant submitted to CIS a copy of his passport, which contains a stamp from the United States Embassy Quito that indicates the applicant applied for a visa in Quito on December 24, 1987. This

fact, combined with the applicant's February 5, 1986 arrest for attempting illegal entry into the United States, undermines the applicant's assertion of continuous unlawful residence and continuous physical presence during the statutory period. The applicant's number of absences or length of those absences cannot be calculated to determine whether he satisfies the regulations at 8 C.F.R. § 245a.15(c)(1).

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The record contains no explanation for these inconsistencies. Based on the inconsistent statements from the applicant and the affiants, these documents cannot be considered credible evidence of the applicant's continuous unlawful presence in the United States during the statutory period.

There are serious questions of credibility that have arisen from the applicant's submissions. It is impossible for us to find that all of the applicant's claims are true, because those claims are sometimes in conflict. Given these credibility issues, we cannot simply take unsupported claims at face value. Competent objective evidence would overcome these issues, pursuant to *Matter of Ho*, but the lack of primary evidence, coupled with the inconsistent claims in the affidavits with the applicant's own statements, leaves little foundation upon which we could confidently base a finding of eligibility.

A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003). However, anytime an application includes numerous errors and discrepancies, and the applicant fails to resolve those errors and discrepancies after CIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the applicant's assertions. Doubt cast on any aspect of the applicant's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the application or visa petition. *Matter of Ho*, 19 I&N Dec. at 591. In this case, the discrepancies and errors catalogued above lead the AAO to conclude that the evidence of the applicant's claimed residency is not credible. Thus, the record does not contain any contemporaneous evidence, or other sufficient credible evidence, to establish that the applicant resided in the United States during the requisite period.

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.