

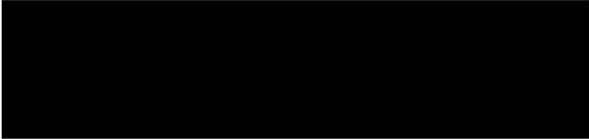


U.S. Citizenship
and Immigration
Services

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FILE:



MSC 02 113 62945

Office: DALLAS

Date:

FEB 05 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, Dallas, 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 stated that the applicant provided no evidence that he resided in the United States during the “years 1982, 1983, 1985, 1987, and 1988.”

On appeal, counsel asserts that the applicant has submitted sufficient credible evidence of residency to meet his burden of proof.

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.

Although Citizenship and Immigration Services (CIS) 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

Here, the submitted evidence is not relevant, probative and credible. Counsel contends that the “primary” evidence submitted by the applicant, which includes documents from the California Department of Motor Vehicles and the Social Security Administration, shows that the applicant was present in the United States in the years 1980, 1981 and 1984, and supports the inference that the applicant resided in the United States from 1981 to 1984. Counsel asserts that the secondary evidence submitted by the applicant, which include affidavits from employers, co-workers and acquaintances, is sufficient to demonstrate that the applicant resided in the United States in an unlawful status from 1984 through May 4, 1988. The director did not analyze this evidence in her decision.

Affidavits submitted by the applicant contain information that is inconsistent with information in the applicant’s Form I-687, Application for Status as a Temporary Resident, and are therefore not credible. [REDACTED] states in an affidavit dated March 11, 2003 that the applicant resided at [REDACTED] in Pacoima, California from 1988 to 1993, but the applicant does not list this address as a residence on his Form I-687. Likewise, in an affidavit dated March 12, 2003, [REDACTED] states that she worked with the applicant at [REDACTED] from 1984 to 1988, but the applicant indicates on his form I-687 that he worked at [REDACTED] from July 1988 to February 1989. Finally, in a declaration dated March 14, 2003, [REDACTED] states that he and the applicant worked together at the [REDACTED] Corporation, but lists a different address for the company than the address listed by the applicant in this Form I-687.

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). Doubt cast on any aspect of the applicant'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.* The applicant has failed to submit independent objective evidence that resolves the discrepancies noted above.

As the applicant has not submitted sufficient credible evidence of residency, he therefore has 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.