



U.S. Citizenship
and Immigration
Services

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FILE:

MSC 01 331 61250

Office: LOS ANGELES

Date: FEB 06 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, 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 determined that “the affidavits/statements [the applicant] submitted do not contain enough objective evidence to which they can be compared to determine whether the attestations are credible, plausible, or internally consistent with the record.”

On appeal, counsel asserts that the director erred in denying the application solely on the basis that the evidence of residency submitted by the applicant consisted only of affidavits. Counsel contends that the director also erred in denying the application without detailing any specific deficiencies in the evidence submitted by the applicant. 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.

On his Form I-687, Application for Status as a Temporary Resident, the applicant listed only one address as his residence since arriving in the United States. The record does not contain any additional objective evidence indicating that the applicant resided at this address. The applicant also indicated on his Form I-687 that his occupation was "farm worker" and that he had worked for different employers in this capacity since 1981. The applicant did not list the names of any of his employers, and the record does not contain any additional objective evidence indicating that the applicant worked as a farm worker. In an affidavit submitted by the applicant and dated July 24, 2001, [REDACTED] states that he knew the applicant from 1983 to 1988 while the applicant was working as a "technician trainee" at "Stereo Components" in Fullerton, California. In an affidavit submitted by the applicant and dated July 13, 2001, [REDACTED] states that he worked with the applicant from 1981 and 1983 at "Target Mailing Services" in Arcadia, California.

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 or otherwise meets his burden of proof.

In addition, according to an FBI report based on the applicant's fingerprints, the applicant was arrested by the Pasadena Postal Inspector on June 27, 2005 and charged with violating section 311.11(a) of the California Penal Code (PC), obscene matter, and section 647(a) PC, lewd conduct. The final dispositions of these charges are not known.

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.