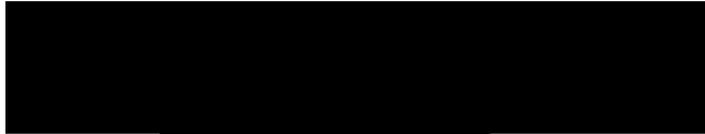


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and Immigration
Services

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FILE:

MSC 02 063 60579

Office: NEW YORK

Date:

JAN 09 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, 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 applicant had not presented credible evidence showing he resided in the United States in unlawful status as of January 1, 1982. The director observed that the applicant entered the United States with a tourist visa on July 22, 1983.

On appeal, counsel contends that the director's analysis of the evidence is flawed, and that the applicant has submitted sufficient credible evidence of residency.

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.

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 the record.

The director observed that the applicant submitted an affidavit from [REDACTED] in which the affiant stated that he has known the applicant since 1982 and began working with the applicant in 1983 at [REDACTED] in New York City. The director noted that the applicant testified at his interview that he worked for Grabstein Deli in 1982, but [REDACTED] failed to indicate that he was the applicant's employer in his affidavit. Counsel contends that the director misread the affidavit, which states that the affiant knew that applicant since "he used to work at my father's store, [REDACTED] at Rockaway Pkwy., Brooklyn." Counsel asserts that the affiant would not have stated that the applicant was his employee because the applicant was actually his father's employee.

Although the AAO concurs with counsel's analysis, counsel has failed to address the more general inconsistency between the applicant's employment history listed in the applicant's Form I-687, Application for Status as a Temporary Resident, and the [REDACTED] affidavit and other evidence in the record. On his Form I-687, the applicant indicates that he was employed by [REDACTED] from December 1981 through 1984, [REDACTED] from January 1985 to June 1987, and [REDACTED] from August 1987 to September 1990. This information is inconsistent with [REDACTED] testimony and with information in the affidavit from [REDACTED] general manager of the [REDACTED]

As stated above, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. The applicant has failed to address and resolve the inconsistencies discussed above.

As the applicant has failed to submit credible evidence of sufficient probative value demonstrating that he resided continuously in unlawful status in the United States from before January 1, 1982 through May 4, 1988, 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.