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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: HOUSTON

Date:

JAN 19 2007

MSC 02 135 62403

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. Any further inquiry must be made to that office.

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, Houston, Texas, 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 since before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the applicant was held to a higher standard of proof than reasonable doubt, and that the adjudicator failed to consider all of the evidence of record.

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. Section 1104(c)(2)(B) of the LIFE Act; 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.

In his Notice of Intent to Deny (NOID) dated December 7, 2002, the district director informed the applicant that inconsistencies existed in the information that he provided in support of his I-485, Application to Register Permanent Resident or Adjust Status, and that in the records of his wife. The applicant was also informed that **the district office was unable** to verify his work history. The phone number provided by the applicant for [REDACTED] c. did not belong to the company and the district office could not find another listing for the company. Further, one employer, [REDACTED] stated that he did not open his company for business until after the date that the applicant allegedly began working for him. He further stated that he did not recall writing the letter of employment for the applicant, although he acknowledged the signature as his. The director further informed the applicant that a forensic analysis of envelopes that he submitted in support of his application determined that the envelopes were fraudulent. The applicant was provided with 30 days in which to submit evidence to rebut this derogatory evidence.

In response, counsel stated:

Your documentation regarding lack of verification of employment etc. indicates your office attempted to verify telephone numbers of employers and many were no longer in existence or didn't remember [the applicant], that is quite understandable since you waited in excess of one year to attempt to verify.

Nonetheless, the applicant submitted no additional information to assist Citizenship and Immigration Services (CIS) in verifying the information submitted. The regulation at 8 C.F.R. § 245a.12(e) provides:

Burden of proof. An alien applying for adjustment of status under this part has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods . . . The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification.

Counsel complains that CIS did not attempt verification for more than a year after the documentation was submitted. However, a year is not a significant amount of time such that a company would go out of business without leaving a trace or that a small business would forget when it began operations or who it employed. Further, as noted, the applicant provided no updated information regarding these companies and provided no additional statements from those who "forgot" that he was a former employee.

The applicant made no attempt to explain the discrepancies regarding the envelopes. Counsel merely stated in his letter accompanying the applicant's response to the NOID that "[a]s far as [the applicant] knows these envelopes were perfectly legitimate." 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).

Counsel also submitted documentation that he stated had been requested by the interviewing officer. This documentation consisted of a letter from the [redacted] of Houston, which purportedly show the applicant's participation in the church since 1981. The submitted documents are in the Korean language and do not comply with provisions of 8 C.F.R. § 103.2(b)(3), which requires that documents submitted in a foreign language "shall be accompanied by a full English translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English." Because the applicant failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the applicant's claims. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

On appeal, counsel submits an affidavit from the Reverend [redacted] attesting to the veracity of the documents, stating that he retrieved the documents and provided the information to the district office. However, the applicant failed to submit these documents in accordance with 8 C.F.R. § 103.2(b)(3) and therefore they are not probative in this proceeding.

The applicant failed to provide competent and objective evidence to resolve the inconsistencies in the record as identified by the director in his NOID. Accordingly, the applicant has failed to establish that he resided in the United States in an unlawful status continuously for the requisite period.



ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.