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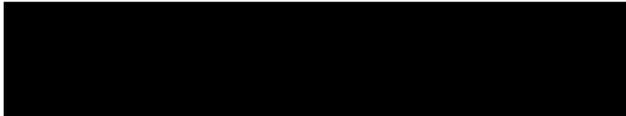
Applicant:



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, New York, 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 since before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that evidence, in its totality, establishes that the applicant is eligible for benefits under the LIFE Act, and that he resolved the inconsistencies regarding his initial date of entry into the United States. The applicant submits no additional documentation in support of the appeal.

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 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 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).

The applicant stated on a form to determine class membership that he first entered the United States on September 25, 1981, when he crossed the border without inspection. In a May 28, 2002 affidavit, the applicant again stated that he first arrived in the United States on September 25, 1981. On his Form I-687 application, which he signed under penalty of perjury on June 14, 1990, the applicant stated that he left the United States on only one occasion after his initial entry, from June 10 to July 8, 1987, when he went to the Dominican Republic for an emergency. The applicant further stated that he lived at [REDACTED]

S [REDACTED] in Bronx, New York from September 25, 1981 to September 1987, and at [REDACTED] in Bronx from September 1987 to December 1989.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant submitted the following evidence:

1. A June 9, 1990 sworn statement from [REDACTED] in which he stated that the applicant lived with him from September 1981 to December 1989. [REDACTED] stated that he lived at [REDACTED], Bronx, New York. We note that this address is consistent with the information provided by the applicant on his Form I-687 application, where he stated that he lived at this address until 1987. However, the applicant stated that he lived in an apartment on Merriam Avenue from September 1987 to December 1989. Additionally, the applicant submitted a March 31, 2004 notarized statement from [REDACTED] in which she certified that the applicant lived with her from January to December of 1981. [REDACTED] stated that the applicant was her cousin and listed her address as [REDACTED] in New York. [REDACTED] did not state whether this apartment is the one she shared with the applicant in 1981. However, other evidence in the record indicates that this is the address at which the applicant subsequently and inconsistently claimed to live in 1981. Nonetheless, the applicant submitted no documentation to corroborate that either he or [REDACTED] lived at [REDACTED] in 1981.

In a March 29, 2005 affidavit, the applicant stated that he first arrived in the United States in January 1981, and alleged that the date of his claimed entrance in September was the result of a mistake by the person who prepared the forms. We note, however, that the applicant confirmed September 1981 as the date of his initial entry into the United States during his April 8, 2004 LIFE Act adjustment interview, as well as in his May 28, 2002 affidavit which was notarized by the same attorney who currently represents him and who notarized the applicant's March 29, 2005 affidavit. The applicant submitted no independent objective evidence to establish that he arrived in the United States at any time prior to January 1, 1982. 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. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa application. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

2. A copy of an envelope addressed to the applicant at [REDACTED] in New York with a postmark of July 12, 1981. As discussed above, although later alleging that he first entered the United States in January 1981, the applicant initially stated that he arrived in the United States in September 1981. Therefore, the date on the envelope precedes the date that he first allegedly arrived in the United States. In later statements and documentation, however, the applicant stated that he arrived in the United States in January 1981.
3. A June 11, 1990 affidavit from [REDACTED] in which she stated that she knew the applicant "from long time ago." [REDACTED] stated that she knew that the applicant was present in the United States from September 1981 to the date of the affidavit, and that he lived at the address on [REDACTED] in Bronx. [REDACTED] did not state specifically when she became acquainted with the applicant or the basis of her knowledge of the applicant's residency in the United States.

4. A May 25, 1990 affidavit from [REDACTED], in which he stated that he and the applicant knew each other "from [a] long time ago." [REDACTED] stated that the applicant was present and residing in the United States from September 1981 to the date of the affidavit. However, [REDACTED] did not state when he initially became acquainted with the applicant or the basis of his knowledge of the applicant's residency in the United States.
5. Two pay stubs dated December 9 and December 23, 1981 from PBC Travel showing the applicant as the payee. The stubs indicate that they are payments for paint and for painting a basement room.
6. Copies of receipts from P.B.C. Travel, Inc. showing the applicant as the remitter with an address of [REDACTED] in New York. The receipts are dated April 18, 1982 and February 12, 1983. Another receipt ([REDACTED] has been photocopied such that the date does not show, and another [REDACTED] shows an obvious alteration in the date. Therefore, the year in which the receipt was issued cannot be determined. The applicant did not allege that he lived at this address in 1982 or 1983, and as discussed above, the applicant submitted no documentary evidence to corroborate that he lived at this address at any time during the requisite period. The applicant also submitted a receipt from NAFICA in New York dated May 15, 1984. This receipt shows the applicant as the remitter but does not show an address.
7. Copies of receipts from the Soundview Health Center in Bronx, New York dated March 15, April 20 and June 4, 1983, showing the applicant as the remitter.
8. A copy of a receipt dated February 7, 1984 showing the applicant's name and address at [REDACTED] in New York. The applicant did not claim to have lived at this address in 1984.
9. A copy of an envelope addressed to the applicant at [REDACTED] in New York, with a postmark of April 17, 1984. The applicant did not indicate that he lived at this address in 1984.
10. A May 27, 1990 sworn declaration from [REDACTED], in which he stated that he took the applicant to the airport for his trip to the Dominican Republic on June 10, 1987.
11. A copy of the New York birth certificate of the applicant's son born on October 25, 1987.
12. A copy of a specimen request for the applicant from the Bronx Lebanon Hospital Center, reflecting that the specimen was collected on February 15, 1988.

A copy of a receipt from Classic Moving & Storage, Inc., dated September 3, 1983 does not identify the applicant as either the shipper or a representative, and therefore is not evidence of the applicant's continued residence in the United States during the required time frame.

On his Form G-325A, Biographic Information, which he signed under penalty of perjury on May 29, 2002, the applicant stated that he was married in the Dominican Republic on February 28, 1987 and divorced a little over a year later, also in the Dominican Republic. However, the applicant stated on his Form I-687 application that he remained in the United States from his initial entry in 1981 until June 1987. The applicant provided no documentary evidence to explain this inconsistency in the record. *Matter of Ho*, 19 I&N Dec. at 591-92.

Further, the applicant stated on his Form G-325A that he lived at [REDACTED] in Bronx, New York from April 1981 until June 2000. This information is also inconsistent with the information provided on the applicant's Form I-687 application and 2002 affidavit in which he stated that he lived on [REDACTED] and at [REDACTED], and with his 2005 affidavit and a statement from his cousin that he lived on Academy Street during this same time frame.

According to the interviewer's notes taken during his LIFE Act adjustment interview conducted on April 8, 2004, the applicant stated that he arrived in the United States on September 25, 1981 and that, upon his arrival, he lived at [REDACTED] in New York. As discussed above, the applicant made conflicting statements about his initial arrival in the United States and his residency during that time. The applicant submitted witness statements and other documentary evidence that supported each of these conflicting claims. Additionally, the applicant claimed that his only absence from the United States was in June 1987; however, on his Form G-325A, he stated that he was married in the Dominican Republic on February 28, 1987. As the applicant submitted no independent objective evidence to resolve these inconsistencies, both the evidence and his claims lack credibility. Accordingly, it is concluded that he has failed to establish continuous residency in the United States during the requisite period.

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