

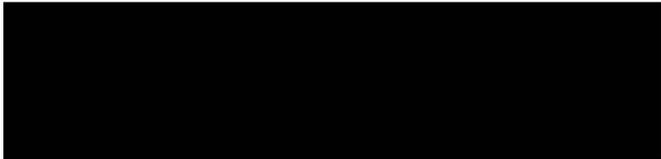
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FILE:



MSC 01 352 61671

Office: SEATTLE

Date: APR 15 2008

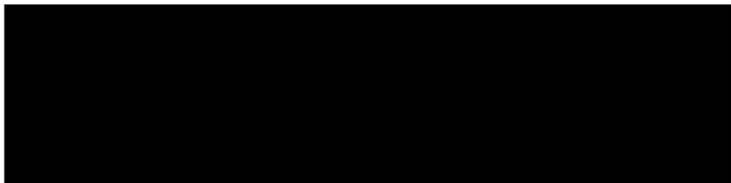
IN RE: Applicant:



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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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 (director) in New York City. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, and was continuously physically present in the United States from November 6, 1986 through May 4, 1988.

On appeal counsel submits a brief and copies of previously submitted documentation.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. See section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

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 its amenability to verification. See 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 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.

Although the 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. See 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The applicant, a native of Morocco, filed his application for permanent resident status under the LIFE Act (Form I-485) on September 17, 2001. At that time there was no documentary evidence in the record of the applicant's presence in the United States before November 5, 1988, the date he entered the country with a nonimmigrant B-2 visa, valid for six months.

On September 10, 2003 the director issued a Notice of Intent to Deny (NOID), citing two documents submitted by the applicant at his interview for LIFE legalization on June 13, 2002 – an affidavit from [REDACTED] stating that she had known the applicant since September 1981 and a photocopied envelope addressed to the applicant in Jersey City, New Jersey, postmarked July 18, 1982 – as insufficient evidence to establish that he met the continuous residence and physical presence requirements for legalization under the LIFE Act. The applicant was granted 30 days to submit additional evidence.

In response to the NOID counsel resubmitted copies of documentation already in the record and asserted that the evidence of record established the applicant's continuous residence in the United States since before January 1, 1982.

On August 31, 2004 the director denied the application. The director determined that the applicant was in Morocco in 1983 based on documentary evidence that he was issued a new passport in Casablanca in October 1983. The director noted that the address on the envelope the applicant claims was mailed to him in July 1982 is not one he identified as a residential address on any of his applications, and that the date on the envelope appeared to have been altered. In view of these and other evidentiary deficiencies, the director concluded that the applicant had failed to establish his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and his continuous physical presence in the United States from November 6, 1986 through May 4, 1988.

On appeal counsel reiterates his contention that the applicant has submitted sufficient evidence to establish his continuous residence and physical presence in the United States for the requisite time periods. While acknowledging that a passport was issued to the applicant in Casablanca in October 1983, counsel asserts that the applicant was not there to pick it up because the passport renewal process was conducted by mail. With regard to the envelope addressed to the applicant from an individual in Morocco, postmarked July 18, 1982, counsel disputes the director's finding that the date was altered and asserts that no specific evidence was cited by the director in support of this finding.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that he has not.

The AAO agrees with the director that the postmarks on the photocopied envelope appear to be altered. While the numbers indicate a postal date of July 18, 1982, the "82" is out of alignment with the "19" on both postmarks, and the "2" appears to have been altered by handwriting on both postmarks. Furthermore, the applicant has not explained why the envelope would have been addressed to him at [REDACTED], Jersey City, in July 1982, since he claimed on an application for temporary resident status (Form I-687) filed in August 1991 that his residence during the summer of 1982 was 215 Sip Avenue, # 1, in Jersey City.

In addition to the lack of satisfactory explanations for the evidentiary issues raised by the envelope, the applicant has offered a variety of different and conflicting dates for his initial entry into the United States and the commencement of his unlawful residence in the country. On the Form I-687 he filed in August 1991 the applicant stated that his first residence in the United States after his initial entry was at the aforementioned [REDACTED] address in Jersey City from May 1982 until March 1985. On an accompanying application form for class membership in the "LULAC" class action lawsuit¹ the applicant stated that he entered the United States in November 1981, six months earlier. The applicant has not accounted for his place of residence from November 1981 to May 1982. At his interview for LIFE legalization in June 2002 the applicant asserted that he initially entered the United States in November 1981 by jumping ship. At that same interview, however, he submitted the affidavit from [REDACTED], a resident of Washington State, who stated that she had met the applicant in September 1981 (two months earlier) on a vacation in New York City. Finally, on the biographic information sheet (Form I-325) he filed with his LIFE application in September 2001, the applicant stated that his last address outside the United States of more than one year was [REDACTED] in Casablanca from November 1958 to January 1987.

It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92, (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of the applicant's remaining evidence. *See id.*

Upon review of the entire record, there is still no credible evidence of the applicant's presence in the United States before November 5, 1988, the date of his entry with a B-2 visa. Aside from the unreliable envelope dating from July 1982, there is no contemporaneous documentation from the time period of January 1, 1982 through May 4, 1988 demonstrating the applicant's residence and

¹ *League of United Latin American Citizens v. INS*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) ("LULAC").

physical presence in the United States. The affidavit of [REDACTED] in September 2001, on which counsel places so much stock, contains virtually no information. It states simply that the affiant met the applicant 20 years earlier in New York City (two months before he claims to have entered the country by jumping ship) and that they have remained close friends. Ms. [REDACTED] does not provide any residential addresses for the applicant during the 1980s, however, nor any details about the applicant's life in the United States and her interaction with him over the years. Neither has she provided any documentary evidence, such as photographs or letters, showing her personal connection to the applicant.

Given the conflicting information provided by the applicant, and his reliance upon documents with minimal probative value, it is concluded that the applicant has failed to establish his continuous residence in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and his continuous physical presence in the United States from November 6, 1986 through May 4, 1988, as required under section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A). Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

The appeal will be dismissed, and the application denied.

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