



U.S. Citizenship  
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FILE: [REDACTED] Office: NEW YORK

Date: APR 25 2008

MSC 03 168 61671

[REDACTED] - consolidated]

IN RE: Applicant:

[REDACTED]

PETITION: 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:

[REDACTED]

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, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, and that he maintained continuous physical presence in the United States during the period from November 6, 1986 through May 4, 1988, as required under section 1104(c)(2)(B) and (C) of the LIFE Act.

On appeal, the applicant submits a brief statement and documentation indicating that he opened a bank account in New York in 1987, as well as a letter from an acquaintance attesting to his (the applicant's) having lived in the United States since the early 1980's.

An applicant for permanent resident status under section 1104 of the LIFE Act must 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.

"Continuous unlawful residence" is defined at 8 C.F.R. § 245a.15(c)(1), as follows: An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded *forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed.

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.

On May 12, 2004, the applicant was interviewed in connection with his application to adjust status to permanent resident status under the LIFE Act. At the time of interview, the applicant stated that he entered the United States in November 1981 and had been absent from the United States for “six months or more” - from April 1987 through November 1987 - in order to visit family in Colombia.

On May 3, 2005, the district director issued a Notice of Intent to Deny (NOID) the application because the applicant had failed to submit documentation to establish by a preponderance of the evidence that he had resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The director noted that the applicant had stated under oath at his interview that he had been absent from the United States for more than 45 days and had failed to establish that his return could not be accomplished during the allowed 45-day time period due to emergent reasons. The applicant was granted thirty days to respond to the notice.

In response to the NOID, the applicant submitted an undated earnings statement and documentation dated after the required time period.

On June 29, 2005, the district director denied the application for the reasons stated in the NOID.

Although the term “emergent reason” is not defined in the regulations, *Matter of C-*, 19 I. & N. Dec. 808 (Comm. 1988) holds that *emergent* means “coming unexpectedly into being.” At no point has the applicant put forth any reason or any valid basis for his departure from this country in April 1987 and his prolonged absence until November 1987, or any clear evidence of his intent to return to the United States within 45 days. Absent evidence that the applicant intended to return within 45 days, it cannot be concluded that an emergent reason “which came suddenly into being” delayed or prevented the applicant’s return to the United States during the 45-day period.

It is noted that there are inconsistencies in various documents submitted by the applicant and his testimony at interview. As previously discussed, at interview, the applicant stated that he entered the United States in November 1981 and had been absent from the United States for “six months or more” - from April 1987 through November 1987 - in order to visit family in Colombia. However, on a Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act), completed by the applicant in June 1990, he indicated that he had been absent from the United States from June 20, 1987, to July 18, 1987. However, on appeal, the applicant submitted a letter from a client services representative from North Fork Bank, GreenPoint Division, Astoria, New York, stating that the applicant opened an account on June 27, 1987.

Furthermore, on his Form I-485, Application to Register Permanent Resident or Adjust Status, filed on March 17, 2003, he left blank the question in Part 1 of the form asking his date of last arrival in the United States.

Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

The applicant has failed to establish that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, and that he maintained continuous physical presence in the United States during the period from November 6, 1986 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act. Given this, he is ineligible for permanent resident status under section 1104 of the LIFE Act.

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