

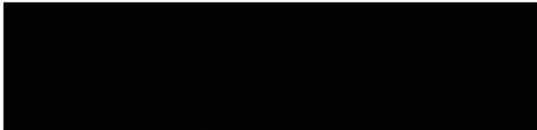
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



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FILE:

MSC 01 340 60274

Office: NEW YORK

Date:

IN RE:

Applicant:



DEC 24 2008

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. The file has been returned to the National Benefits Center. 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 "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant had a prolonged absence from the United States from June 1985 to January 1986, and, therefore he failed to establish that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, the applicant states that the director's decision should be reversed because his absence was from December 1985 to January 1986. Counsel does not submit additional evidence on appeal.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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).

“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.

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.

In the Notice of Intent to Deny (NOID), dated August 26, 2005, the director stated that the applicant failed to submit sufficient evidence demonstrating that he entered the United States before January 1, 1982, and of his continuous unlawful residence and his physical presence in the United States, during the requisite period. The director noted that during his interview on February 17, 2004, the applicant stated that he first entered the United States in December 1981; that he had departed the United States for his native country, Haiti, in June 1985; and, he remained in Haiti until January 1986, one month after his marriage. The director also noted that the applicant indicated on his Form G-325A, dated August 29, 2001, that he married in Haiti, on December 27, 1985. The director determined, therefore, that the applicant had exceeded the forty-five (45) day limit for a single absence from the United States based on the applicant’s testimony at his interview. For these reasons, the director concluded that the applicant could not establish his continuous residence during the requisite period. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated June 19, 2006, the director denied the instant application based on the reasons stated in the NOID. The director noted that the applicant’s response to the NOID failed to overcome the reasons for denial as it consisted only of his statement changing his testimony to state that he had departed the United States for Haiti on December 23, 1985 and returned to the United States on January 27, 1986.

The issue in this proceeding is whether the applicant has had prolonged absence from the United States that exceeded *forty-five (45) days*, and the aggregate of all absences has exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988. The applicant submitted letters, affidavits, and other documents as evidence to support his Form I-485 application. Here, the submitted evidence is not relevant, probative, and credible.

The evidence of record indicates that the applicant was outside the United States beyond the period of time allowed by regulation. The applicant claims that he has resided continuously in the United States since 1981. However, based on his own statement during his interview on February 17, 2004, the applicant testified that he had departed the United States for Haiti in June 1985, and he had resided in Haiti from June 1985 until January 1986, one month after he was married. Also, the applicant submitted a Form G-325A in connection with his application, dated August 29, 2001, which indicates that the applicant was married in Haiti on December 27, 1985. The applicant's absence from the United States from June 1985 to January 1986 constitutes a break in his continuous residence.

The applicant asserts that his absence was from December 23, 1985 to January 27, 1986, less than 45 days. However, the applicant does not submit any explanation for this statement which contradicts his testimony at his February 17, 2004 interview where he admits to an absence of over 6 months from June 1985 to January 1986. Neither does the applicant deny having stated at his interview that he had departed the United States for over six months.

The applicant does not assert that his absence was for emergent reasons. Although this term is not defined in the regulations, *Matter of C-*, 19 I. & N. Dec. 808 (Comm. 1988) holds that *emergent* means "coming unexpectedly into being." The applicant does not submit any evidence to establish that his prolonged absence was of an emergent reason. Therefore, the applicant has failed to establish that his prolonged absence from the U.S. was due to an "emergent reason."

The applicant has submitted affidavits and other evidence in an attempt to establish his continuous residence. The evidence of record, however, is clear that the applicant cannot establish the requisite continuous residence. The applicant's claim that he has resided continuously in an unlawful status since prior to January 1, 1982, is not credible. It is noted that although the applicant stated in response to the NOID, and on appeal, that he had departed the United States for Haiti on December 23, 1985 and returned on January 27, 1986, the record reflects that the applicant submitted a letter, dated August 30, 2001, which stated that since his entry into the United States in December 1981, he made two trips to Haiti: the first trip to Haiti was in July 1987, returning to the United States in August 1987; and the second was in April 1989. There is no mention in his letter of a trip from December 1985 to January 1986 as the applicant indicates on appeal. These discrepancies cast doubt on the veracity of the applicant's claim and whether his claimed travel history is true. 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 application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and 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 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in his testimony and in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status throughout the requisite period.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988, as required under 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.