

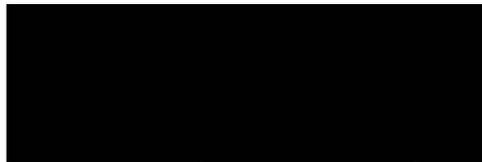
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U.S. Citizenship  
and Immigration  
Services

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FILE:

MSC 02 239 61725

Office: NEW YORK

Date:

JUL 03 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. 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.

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 denied the application because the applicant failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

On appeal, counsel for the applicant states that the director erred in denying the application by failing to give adequate weight to the evidence. 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).

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 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 October 19, 2006, the director stated that the applicant failed to submit evidence demonstrating his continuous unlawful residence in the United States during the requisite period. The director noted that the applicant's passport bears a visitor's visa issued in Madras on December 15, 1987, and a notation in the applicant's passport indicates that he had previously traveled on a different passport (passport No. [REDACTED]), which had been issued in Bangalore on June 10, 1986. The director determined that this primary passport evidence, which the applicant had not disclosed during the interview or on the original Form I-687, indicates that the applicant was in India on June 10, 1986. The director granted the applicant thirty (30) days to submit additional evidence.

In her denial notice, the director noted that the applicant responded to the NOID and attempted to clarify the issues raised by the director pertaining to the passport issued in Bangalore on June 10, 1986. In his response, the applicant states that he obtained the passport that was issued on June 1986, via mail. The applicant also stated that during 1987-1988 he had departed the United States for India, obtained the U.S. visa in 1987 shortly after he arrived in India, and he then traveled back to the United States within 45 days. The director determined that the applicant's rebuttal was insufficient to overcome the grounds for denial. In the Notice of Decision, dated November 20, 2006, the director denied the instant application based on the reasons stated in the NOID.

On appeal, the applicant's counsel states that the applicant has explained "how his passport was renewed in India without the applicant leaving the United States." Counsel further asserts that the applicant's absence from the United States did not break his continuous residence and physical presence.

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 during the requisite period. Here, the submitted evidence is not relevant, probative, and credible.

The evidence submitted by the applicant which pertains to the requisite period consists only of his own affidavit, sworn to on August 24, 1989. In his affidavit, the applicant attests that he first entered the United States on November 29, 1981, and he resided in the United States continuously until

November 28, 1987, obtained a U.S. visa at the U.S. Embassy in Madras, on December 15, 1987, and returned to the United States on January 17, 1988.

Upon review, the AAO concurs with the director's findings.

The regulation at 8 C.F.R. § 245a.15(c)(1) provides that 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 applicant's sworn affidavit, and the evidence from the stamps in the passport, points to his absence and do not overcome the conclusions of the director. Therefore, the AAO must conclude that continuous residency during the requisite period has not been established.

Counsel's assertion that the director failed to consider the evidence and drew her own conclusion that the applicant was absent from the United States for over 45 days is without merit. According to the applicant's sworn statement in his affidavit he was absent for forty-nine days, from November 28, 1987, until January 17, 1988. Therefore, if the applicant's statements in his affidavit are in fact true, he would have been absent from the United States beyond the period allowed for a single absence..

The applicant has failed to provide a valid reason that necessitated a single absence from the United States beyond 45 days. In the absence of 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 beyond the 45-day period.

The applicant has not established that his absence was due to emergent reasons. Since, by his own admission, the applicant has had a single absence from the United States which exceeded forty-five (45) days, he has failed to establish that he has resided continuously in the United States. The applicant has failed to establish that he has met the regulatory provision under 8 C.F.R. § 245a.15(c)(1).

Furthermore, the evidence of record in the form of the applicant's passport and the issuance of his US visa in Madras in December 1987, indicates that the applicant lived and worked outside the United States during the requisite period. In order to receive such a visa, the applicant had to convince a U.S. Consular official that he resided and worked in India. The issuance of the applicant's U.S. visa is, therefore, inconsistent with his claim that he resided in the United States in an unlawful status since 1981. 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). In addition, the applicant has failed to submit any contemporaneous documentation to establish his continuous residence in the United States. In that the applicant claims that he has been in the United States since November 1981, it is reasonable to expect that he would be able to provide reliable contemporaneous documentation to establish his continuous residence in the United States during the requisite period. The applicant has failed to submit any objective evidence to explain or justify the discrepancies 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 during the requisite period.

The applicant has, therefore, failed to establish that he resided in continuous unlawful status in the United States from before January 1, 1982 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.