



U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE: [Redacted]  
MSC 02 024 60796

Office: NEW YORK

Date: JUL 16 2008

IN RE: Applicant: [Redacted]

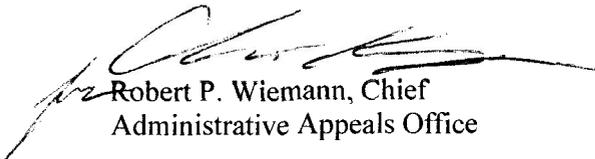
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:

[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, 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 since such date through May 4, 1988. The director stated that the record contained fraudulent and uncorroborated evidence submitted by the applicant and previous counsel.

On appeal, counsel contends that the applicant has submitted sufficient evidence to meet his burden of proof. Counsel asserts that the submitted affidavits are credible and amenable to verification. Counsel submits additional evidence in support of the applicant's claim.

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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered the United States before January 1, 1982, and continuously resided in an unlawful status in the United States during the requisite period. Here, the applicant has failed to meet this burden.

Based on his Form for Determination of Class Membership in *CSS v. Meese*, dated August 6, 1990, the applicant stated that he first entered the United States on October 10, 1981, without inspection. He also stated that he departed the United States on May 4, 1987, to visit Pakistan and returned on May 30, 1987, without inspection. During his interview, the applicant stated that he had no direct evidence of his entry into the United States or continuous unlawful residence during the statutory period. The applicant provided affidavits from numerous acquaintances who attested to the fact that the applicant resided in the United States during the statutory period.

In the Notice of Decision (NOD), dated November 6, 2006, the director noted that, upon verification, several of the affidavits contained letterhead and addresses that did not relate to the affiants. The director rejected the affidavits as fraudulent. On appeal, counsel denies the applicant submitted fraudulent evidence and submits additional affidavits in support of the applicant's claim. However, counsel failed to submit independent, objective evidence to reconcile the noted discrepancies in the director's NOD. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The record contains no independent objective evidence to explain the above inconsistency. A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9<sup>th</sup> Cir., 2003). However, anytime an application includes numerous errors and discrepancies, and the applicant fails to resolve those errors and discrepancies after provided an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the applicant's assertions.

The director also noted that the applicant's prior counsel, [REDACTED] was convicted on seven counts of immigration fraud on August 14, 1990. The director stated that [REDACTED] acknowledged

that he submitted fraudulent documentation on behalf of the applicant. However, there is no evidence in the record indicating such an acknowledgement by [REDACTED]. While it may be true that [REDACTED] was convicted fraud, the AAO cannot assume that all of the applications filed by [REDACTED] were fraudulent. However, the record does contain several discrepancies which tend indicate the submitted affidavits lack credibility.

Several individuals submitted affidavits corroborating the applicant's presence in the United States during the statutory period. The affidavits vary in the nature of details provided, but on the whole provide general statements with little probative value. In addition, the majority of the affidavits are notarized by [REDACTED], Notary Public, Murray County, Georgia. Ms. [REDACTED] notarized five affidavits from August 3-6, 1990. The affidavits indicate that three affiants resided in Georgia and two affiants resided in New York. Two of the affidavits, one from Georgia and one from New York, are both dated on the same date and both notarized by [REDACTED]. It is also noted that one of the affiants from Georgia provided copies of her leases from 1987-1991, all of which were notarized by [REDACTED]. Given the fact that the applicant's prior counsel was convicted of immigration fraud and the director's unsuccessful attempts to verify the affidavits as stated in the NOD, the nature of the notarized affidavits seriously brings into question the credibility of the applicant's claim.

Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has not submitted sufficient contemporaneous evidence of his entry into the United States or his continuous unlawful residence during the requisite period. While contemporaneous documents may add to the credibility of an applicant, it is by no means indispensable. The applicant also submitted numerous affidavits, which resulted in discrepancies upon verification by the director. These inconsistencies have not been resolved by independent, objective evidence. The affidavits lack credibility due to their minimal probative value and the nature of the notarization. Given the totality of the evidence, it is concluded that the applicant has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

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.