

Notifying data deleted to
prevent clearly unwarranted
disclosure of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

62

[Redacted]

FILE:

[Redacted]

Office: LOS ANGELES

Date:

SEP 02 2008

(CONSOLIDATED)
(CONSOLIDATED)

MSC 02 252 63756

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. 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, Los Angeles, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988.

On appeal counsel for the applicant asserts that affidavits are sufficient to establish continuous unlawful residence during the required period. The director noted inconsistencies in the applicant's testimony and expressed doubts about the credibility of submitted documentation.

An applicant for permanent resident status must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. 8 C.F.R. § 245a.11(b).

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).

An applicant must establish eligibility by a preponderance of the evidence. 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 petitioner 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 petitioner 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 or petition.

Citizenship and Immigration Services (CIS) regulations provide an illustrative list of contemporaneous documents that an applicant may submit to establish presence during the required period. 8 C.F.R. § 245a.15(b)(1); *see also* 8 C.F.R. § 245a.2(d)(3)(vi)(L). Such evidence

may include employment records, tax records, utility bills, school records, hospital or medical records, or attestations by churches, unions, or other organizations so long as certain information is included. The regulations also permit the submission of affidavits and any other relevant document, but applications submitted with unverifiable documentation may be denied. Documentation that does not cover the required period is not relevant to a determination of the alien's presence during the required period and will not be considered or accorded any evidentiary weight in these proceedings.

On January 27, 2005, the director sent the applicant a Notice of Intent to Deny (NOID), which stated that the evidence submitted by the applicant was insufficiently probative of continuous unlawful residence in the U.S. from prior to January 1, 1982 through May 4, 1988, and continuous physical presence in the U.S. from November 6, 1986 through May 4, 1988. In addition the director noted inconsistencies in the applicant's assertions and expressed doubts about the credibility of submitted evidence.

The applicant responded by asserting he had no knowledge of the questionable documentation and was unaware that a previous filer had made inconsistent assertions on his behalf.

On March 23, 2006, the director denied the application because the applicant had failed to establish his continuous unlawful presence during the required period.

On appeal the applicant asks that CIS reconsider his application.

The record consists primarily of "other relevant documents" and does not include any primary evidence listed in 8 C.F.R. § 245a.15(b)(1). What is clear from an examination of the record is that the documents submitted are internally inconsistent and contradict the applicant's own testimony with regard to the facts surrounding his date of arrival in the United States and his subsequent continuous unlawful residence.

In an application for permanent residence submitted in 1992 the applicant submitted several documents, including two alleged school records asserting that he had entered the United States in 1971, and had attended an elementary and junior high school in the United States. The submissions also include a letter from the applicant's father asserting he had brought the applicant's family to the United States in 1971. The applicant asserted on his G-325 biographic information sheet that he had resided at an address on [REDACTED], in Van Nuys, California from 1971 to 1989. As noted by the director, the elementary and junior high schools which the applicant had allegedly attended were contacted and the documents were disavowed.

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.*

The applicant submitted another I-485 in February 1994 containing the many of the same affidavits, but not the school records. In that application the applicant also asserted that he had arrived in 1971, to which the submitted documents attested. That application was denied on March 8, 1994.

On June 9, 2002, the applicant submitted this application for LIFE Act legalization, asserting on his I-485 that he had entered the United States in 1980, and submitting a number of generic letters asserting he had lived in the United States since 1981, and had worked at various locations during the required period. The biographic information and submitted documentation made no mention of his address in Van Nuys from 1971 to 1989, listed in his first application, and instead asserted that he resided in Sun Valley, California from 1980 to 1988.

On September 29, 2002, the director sent the applicant a NOID indicating that he was not eligible for LIFE Act legalization because he could not establish that he had filed a written claim with the Attorney General for class membership in one of three listed class action lawsuits. Neither counsel nor applicant responded.

On January 21, 2005, the applicant signed a sworn affidavit provided by CIS stating he had never attended elementary, junior high or high school in the United States, and that he had entered the United States in 1981 and had left only briefly in 1986. This sworn statement contradicts the assertions made by the applicant on his two prior applications.

The director issued a NOID on January 27, 2005, and referenced the inconsistencies in the applicant's assertions and expressed doubts about the credibility of the applicant's evidence. In response the applicant simply stated he was unaware that a previous filer had made inconsistent assertions on his behalf and denied having ever submitted the school records. Simply disavowing inconsistent testimony and denying that evidence was submitted is not sufficient to overcome the director's noted inconsistencies.

The discrepancies and errors catalogued above lead the AAO to conclude that the evidence of the applicant's eligibility is not credible. Accordingly, the applicant has not established the eligibility and the appeal will be dismissed.

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