



U.S. Citizenship
and Immigration
Services

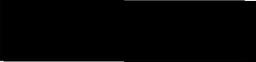
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FILE:



Office: LOS ANGELES

Date:

SEP 02 2008

MSC 02 009 63466

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:

SELF-REPRESENTED

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. The director noted an inconsistency in the applicant's testimony and application.

On appeal the applicant asks that CIS reconsider his application.

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.

The applicant has submitted documentary evidence which establishes that he was probably residing unlawfully in the United States from March, 1982, through May 4, 1988. The period in question unlawful residence prior to January 1, 1982 through February 1982.

On July 26, 2006, 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.

The applicant did not respond.

On October 14, 2003, 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. Relevant to the period in question the record contains the following evidence:

- (1) A document, bearing the name [REDACTED], asserting generically that he has known the applicant since 1980.
- (2) A document, bearing the name [REDACTED] asserting generically that she has known the applicant since 1983.
- (3) A document, bearing the name [REDACTED] asserting generically that he has known the applicant since 1979.
- (4) An affidavit, signed by [REDACTED], asserting the applicant lived in El Cajon, California, from 1981 to 1985.
- (5) An affidavit, signed by [REDACTED] asserting the applicant lived in El Cajon, California, from October 1981 through January 1984.
- (6) An affidavit, signed by [REDACTED] asserting the applicant lived in El Cajon, California, from October 1981 through January 1984, and that they met at a Christmas party in 1981.

As stated above, the inference to be drawn from the documentation provided shall depend on the *extent* of the documentation. The minimal evidence furnished cannot be considered extensive, and in such cases a negative inference regarding the claim may be made as stated in 8 C.F.R. § 245a.12(e).

Documents which generically assert an affiant has known an applicant since a particular year are not sufficiently probative to support assertions of eligibility. In this case the documents provided list inconsistent areas of residence for the applicant, are generic in nature and fail to fully explain how the affiants came to know the applicant and what the nature of the relationships were. In the affidavit listed at No. 6 above, the affiant testifies that he knew of the applicant's residence in El

Cajon in October 1981, and yet did not meet the applicant until a Christmas party later that year. The documents and affidavits submitted are internally inconsistent, generic in nature, and lack credibility.

In 2003 the applicant was interviewed under oath and testified that he did not enter the United States until February of 1982, and that he entered under a B-2 visitor's visa and did not return to Mexico. In addition, the applicant failed to allege that he had departed the United States in 1987, and stated that he had left the United States only briefly in 2002 under parole. This testimony is contrary to the documentary evidence which has been submitted, and fatal to the applicant's assertion of eligibility for the LIFE program.

Doubt cast on any aspect of the petitioner's proof may undermine 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 discrepancies and errors catalogued above lead the AAO to conclude that the evidence of the applicant's eligibility is not credible. In addition, it appears the applicant is not prima facie eligible for LIFE act application, as there is no evidence in the record that the applicant actually filed a written claim for class membership in one of the legalization lawsuits, nor is there evidence in the record that the applicant actually departed the United States in 1987 and was "front-desked" in his attempt to file a legalization application. 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.