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

U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: NEW YORK Date: OCT 06 2006
MSC 02 225 65743

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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, of 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, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. In particular, the director found "several discrepancies between [the applicant's] oral testimony as it related to Form I-687 and Form I-485 and the information from [the applicant's] previous Agency records as contained in [the applicant's] administrative file."

On appeal, counsel contends that the applicant has submitted sufficient documentation to demonstrate that he entered the United States prior to January 1, 1982 and remained in an unlawful status from before January 1, 1982 through May 4, 1988, and submits an affidavit from the applicant addressing the inconsistencies discussed by the director.

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).**

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.

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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). 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. *Id.*

Here the applicant has failed to offer independent objective evidence that adequately explains and reconciles the inconsistencies in the record.

In the Notice of Intent to Deny (NOID), the director stated that during the applicant's interview, the applicant "informed the Immigration Officer under oath, verbally and in a sworn statement, that [the applicant] first entered the United States in January of 1986 . . . by way of Hidalgo, TX." The director asserted that this contradicted the applicant's Form I-687, in which the applicant indicated that he first entered the United States in May 1981, and the applicant's Affidavit for Determination of Class Membership in CSS v. INS, in which the applicant indicated that he first entered the United States in 1980. In the decision, the director stated that the applicant was given thirty days to respond to the NOID, but failed to do so.[1] The director denied the application "based on the findings in the [NOID]."

On appeal, the applicant, who successfully met the English literacy requirement, contends that he "fell in some contradictions" during his interview because "some of the questions are difficult to understand due to [the applicant's] lack of command of the English language, and also because in the presence of an officer of Immigration, [one] can't help [but] get a little nervous." The applicant also disputes the director's assertion that the applicant indicated on Form I-687 that he first entered the United States in 1980, and reiterates that he first entered the United States in May 1981 but re-entered in 1986 at Hidalgo, Texas after a short trip back to Mexico. The applicant had previously submitted an affidavit from [redacted] stating that the applicant lived at her residence in San Antonio from May 1981 to December 1985, and affidavits from [redacted] building contractor, stating that the applicant worked for him under the name [redacted] from July 1981 to October 1985.

The record shows that prior to the applicant's interview on May 24, 2004, the applicant consistently claimed that he first entered the United States in May 1981. However, the record also shows that the applicant signed a sworn statement at that interview in which he testified that he first entered the United States in January 1986. Although the applicant's Affidavit for Determination of Class Membership does not list the applicant's first entry as 1980 as asserted by the director, a third party affidavit of a "friend" [redacted] submitted by the applicant does attest that the applicant was in the United States by January 1980.

Other evidence in the record also raises doubts concerning the date of the applicant's first entry. For example, the applicant states in his Form I-485 that his daughter was born in Mexico in May 4, 1982 (the applicant's Form I-687 lists her birthday as May 4, 1983), though there is no indication that the applicant left the United States (or that his wife came to the United States) after the applicant's entry in May 1981 prior to a brief return trip by the applicant to Mexico in 1985.

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[1] The record contains an additional "affidavit" from the applicant similar in content to the affidavit submitted by the applicant on appeal. In this document, the applicant states that his purpose is to "answer [the director's] Notice of Intent to Deny dated on July 20, 2004". The document is not dated or notarized. It appears, however, from an envelope in the record, that this document was not mailed to USCIS until October 19, 2004, nearly a month after the director issued the final decision.

The AAO finds that the applicant has failed to submit credible evidence of sufficient probative value to overcome doubts raised by his sworn statement and other evidence in the record concerning the date of the applicant's first entry into and subsequent residence within the United States. The AAO thus concurs with the director that the applicant has failed to prove continuous residence in an unlawful status for the entire period of before January 1, 1982 through May 4, 1988. Accordingly, the applicant has not established eligibility to adjust status to Legal Permanent Resident status under section 1104 of the LIFE Act.

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