



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted]
MSC 02 025 62751

Office: New York

Date: **AUG 02 2007**

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, 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 had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the applicant has submitted sufficient evidence to support his claim of continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

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.

“Continuous unlawful residence” is defined at 8 C.F.R. § 245a.15(c)(1), as follows: 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 director’s determination that the applicant had been absent from the United States for over 180 days was based on the applicant’s own testimony in a sworn statement taken at the time of his interview at the New York district office on August 30, 2004, under oath and in the presence of an officer of the United States Citizenship and Immigration Services (CIS). In his sworn statement the applicant indicated that he arrived in the United States from Ecuador in 1981. He left the United States in 1984 to join the Army in Ecuador and returned to the United States in 1988. A time period that exceeded 180 days.

On June 1, 2005, the director issued a notice informing the applicant of CIS’s intent to deny his LIFE Act application because of his absence from the United States in the requisite period. The applicant was granted thirty days to respond to the notice. The record shows that the applicant submitted additional evidence to support his claim of continuous unlawful residence from before January 1, 1982 through May 4, 1988.

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).

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to not only 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, but also to rebut the content or substance of the sworn statement the applicant provided to CIS on August 30, 2004. Here, the submitted evidence is not relevant, probative and credible.

The applicant filed a Form I-687, Application for Temporary Resident Status under Section 245A of the Immigration and Nationality Act on January 9, 2006. On the Form I-687 application, the applicant indicated that he first entered the United States in September 1981. In a June 5, 2006 interview in connection with his I-687 application, the applicant stated that he entered the United States in May 1981. In an August 2, 1993 sworn affidavit, the applicant stated he entered the United States on December 15, 1981. These statements are inconsistent and contradict the applicant's credibility.

In addition, on the Form I-687 application, the applicant stated that he had resided at the address [REDACTED] from September 1981 to January 9, 2006. During the June 5, 2006 interview, the applicant stated he resided at the street addresses [REDACTED] from 1981-1985, [REDACTED]

██████████ in 1985, and ██████████ from 1985 to 1989. The applicant's statements are different and conflict with each other.

The record also contains sworn affidavits from ██████████ and ██████████. These identical affidavits, which are in the same handwriting except for the signature, further contradict the applicant's credibility. All of the above affiants state that the applicant lived in their house for eight years. They state that the applicant lived at the street address ██████████ from December 1981 to October 1987 and at the street address ██████████ from October 1987 to August 20, 1993. Thus, the affiants' statements conflict with the applicant's sworn statements.

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 explanation for these inconsistencies. Based on the contradictory statements from the applicant himself and the affiants, these affidavits cannot be considered credible evidence of the applicant's presence in the United States prior to 1982.

There are serious questions of credibility that have arisen from the applicant's submissions. It is impossible for us to find that all of the applicant's claims are true, because those claims are sometimes in conflict. Given these credibility issues, we cannot simply take unsupported claims at face value. Competent objective evidence would overcome these issues, pursuant to *Matter of Ho*, but the lack of primary evidence, coupled with the inconsistent claims in the affidavits with the applicant's own statements, leaves little foundation upon which we could confidently base a finding of eligibility.

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 (9th Cir., 2003). However, anytime an application includes numerous errors and discrepancies, and the applicant fails to resolve those errors and discrepancies after CIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the applicant's assertions. Doubt cast on any aspect of the applicant's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the application or visa petition. *Matter of Ho*, 19 I&N Dec. at 591. In this case, the discrepancies and errors catalogued above lead the AAO to conclude that the evidence of the applicant's claimed residency is not credible. Thus, the record does not contain any contemporaneous evidence, or other sufficient credible evidence, to establish that the applicant resided in the United States prior to January 1, 1982.

The applicant has failed to establish that he maintained continuous unlawful residence in the United States during the requisite period for two reasons. First, his evidence is insufficient to establish continuous unlawful residence. Second, the credibility of the applicant and affiants has not been established.

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.