



U.S. Citizenship
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[REDACTED]

FILE: [REDACTED]
MSC 02 131 61431

Office: NEW YORK

Date: APR 14 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 [or Records] 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 through May 4, 1988.

On appeal, counsel asserts that the director erred in denying the instant application by failing to apply the proper evidentiary standard. Counsel maintains that the applicant's testimony and affidavits establish his eligibility under the LIFE Act.

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).

In the Notice of Intent to Deny (NOID), dated on April 6, 2006, the director stated that the applicant failed to submit sufficient evidence to corroborate his claim. The director also noted that several inconsistencies existed in the record. The director granted the applicant thirty (30) days to submit additional evidence. The record reflects that no additional evidence was received. In the Notice of Decision, dated May 29, 2006, the director denied the instant applicant based on the reasons stated in the NOID.

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.

In support of his claim, the applicant submitted the following relevant evidence:

1. An August 1, 1990, sworn affidavit by [REDACTED], who stated that he has personally known the applicant since June 1981 and that the applicant has been working as a gardener since March 1988. The affiant provided his address of residence. The affiant failed to indicate where the applicant resided during the statutory period. Although not required, the affidavit failed to include any supporting documentation of the affiant's presence in the United States during the requisite period or to corroborate the affiant's claim. The lack of detailed documentation detracts from the credibility of the affiant. Also, it is noted that the record contains a Form I-687, Application for Temporary Resident Status under Section 245A of the Immigration and Nationality Act, signed by the applicant on August 1, 1990. In his Form I-687, at Question #36, the applicant stated that he had been working as a gardener since 1981, seven years prior to the affiant's statement. This discrepancy casts doubt on the credibility of the affiant.
2. A July 30, 1990, sworn affidavit by [REDACTED] who stated that he/she has personally known the applicant since 1982. The affiant stated that he/she visited the applicant at [REDACTED], Alameda, frequently. The affiant provided his/her address of residence. Although not required, the affidavit failed to include any supporting documentation of the affiant's presence in the United States during the requisite period or to corroborate the affiant's claim. The lack of detailed documentation detracts from the credibility of the affiant.
3. A February 11, 2004, sworn affidavit by [REDACTED], who stated that she has been a permanent resident of the United States since 1982. The affiant stated that she and her family have known the applicant since 1984. The affiant provided the

applicant's current address of residence, her own address of residence, and telephone number. The affiant failed to indicate where the applicant resided during the statutory period. Although not required, the affidavit failed to include any supporting documentation of the affiant's presence in the United States during the requisite period or to corroborate the affiant's claim. The lack of detailed documentation detracts from the credibility of the affiant.

4. A February 10, 2004, notarized declaration by [REDACTED], who stated that he has known the applicant since 1986-1987. The declarant provided the applicant's current address of residence, his own address of residence, and telephone number. The declarant failed to indicate where the applicant resided during the statutory period. Although not required, the declaration failed to include any supporting documentation of the declarant's presence in the United States during the requisite period or to corroborate the declarant's claim. The lack of detailed documentation detracts from the credibility of the declarant. In addition, the declaration does not establish the applicant's entry into the United States before January 1, 1982, and continuous unlawful residence throughout the duration of the requisite period.

Although the applicant has submitted several affidavits in support of his application, the applicant has not provided sufficient contemporaneous evidence of entry into the United States before January 1, 1982. While two of the above affidavits support the applicant's claim of entry before January 1, 1982, the affidavits lack any first-hand details of his claimed entry. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period. None of the affiants indicated how they dated their acquaintance with the applicant, how they met the applicant or how frequently they saw the applicant. The absence of sufficiently detailed documentation to corroborate the applicant's claim of entry into the United States before January 1, 1982, and continuous unlawful residence for the entire requisite period seriously detracts from the credibility of his claim.

In addition, as noted by the director, the record contain another discrepancy. The record includes a Form for Determination of Class Membership in *CSS v. Meese*, signed by the applicant on August 1, 1990. In his Form for Determination of Class Membership, the applicant stated that he first entered the United States in November 1980. The applicant reiterated the November 1980 entry date in an interview, dated March 1, 2004. However, the record also includes a Record of Sworn Statement in Affidavit Form by the applicant, dated on April 8, 1992. In this statement, the applicant stated that he entered the United States in 1981. The applicant contradicted his own statements. This discrepancy between the applicant's own testimony and applications seriously casts doubt on the credibility of his claim. The fact that the applicant failed to submit any credible evidence to corroborate his date of entry adds further doubt to the credibility of his claim.

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 noted inconsistencies.

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. Given the applicant's reliance upon documents with minimal probative value and discrepancies, it is concluded that he 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