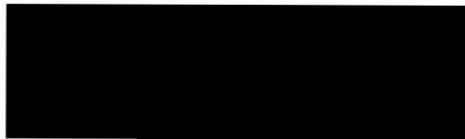


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U.S. Citizenship
and Immigration
Services

PUBLIC COPY



FILE: MSC 01 359 62388

Office: NEW YORK

Date: JUL 02 2008

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:



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 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 since such date through May 4, 1988.

On appeal, counsel submits additional evidence to be considered in support of the applicant's claim.

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).

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 the Notice of Intent to Deny (NOID), dated September 12, 2006, the director stated that the applicant failed to submit sufficient evidence demonstrating his continuous unlawful residence in the United States during the requisite period. The director granted the applicant thirty (30) days to submit additional evidence. The record reflects that NOID was mailed to the applicant's address of record but was returned to Citizenship and Immigration Services as undeliverable. In the Notice of Decision (NOD), dated November 13, 2006, the director denied the instant applicant based on the reasons stated in the NOID.

In the NOD, the director noted that the record contained three affidavits which appeared neither credible nor amenable to verification. The director stated that the affidavits from [REDACTED] and [REDACTED] failed to include identification, proof of the affiants' presence in the United States during the statutory period, or proof of direct personal knowledge of the events being attested to. The affidavits, which are virtually identical, indicate the applicant's place of residence during the statutory period and his claimed absences from the United States. However, the affidavits are not amenable to verification.

On appeal, the applicant submits two updated affidavits from [REDACTED] and [REDACTED]. The affidavits, which are virtually identical, reaffirm the information provided in their previous affidavits. The affiants also provided their contact information and naturalization certificates, which indicate that they were naturalized in 2004 and 1987, respectively. The affidavits failed to include details regarding the affiants' relationship with the applicant and their frequency of contact with him during the requisite period. Therefore, they constitute only limited evidence of the applicant's residence in the United States during the statutory period.

In addition, the applicant filed a Form I-687, Application for Status as a Temporary Resident, dated September 24, 1990. The record reflects that the applicant was identified as procuring his Form I-688A, Employment Authorization Card, through the payment of a bribe to the Salinas Chief Legalization Officer while he was working undercover in Operation Catchhold. The investigation with the Bureau of Federal Investigation identified 22 brokers who paid bribes to the Chief Legalization Officer on behalf of 1,370 applicants. The brokers were prosecuted and convicted. The applicant's Form I-687 application with bribe payment was earmarked and segregated. The applicant was issued an I-688A card in conjunction with the filing of his Form I-687. However, the issuance of the card was not indicative of CSS class membership and, therefore, his I-688A card was revoked. The fact that the applicant committed bribery to procure an immigration benefit seriously

undermines his credibility. Given the fraudulent nature of the application and lack of sufficiently probative evidence, the AAO concludes that the applicant has failed to meet his burden under the LIFE Act.

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.