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FILE:

MSC 02 240 64413

Office: DALLAS

Date:

**JUN 04 2008**

IN RE: Applicant:

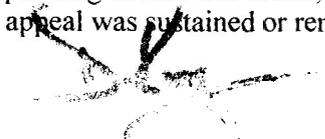
APPLICATION:

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.

  
Robert P. Wieman, 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, Dallas, 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, the applicant asserts that he has met his burden and provided sufficient evidence to establish 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.

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 February 16, 2006, the director noted that the applicant stated he entered the United States in 1985 in a sworn statement. The director determined that applicant failed to establish entry into the United States prior to 1982, and continuous unlawful residence through 1988. The director granted the applicant thirty (30) days to submit evidence to overcome the reasons for denial. The record reflects that additional evidence was received. In the Notice of Decision, dated April 26, 2006, the director denied the instant applicant based on the applicant's failure to establish entry into the United States before January 1, 1982.

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. Here, the applicant has failed to meet this burden.

In support of the applicant's claim of entry into the United States prior to January 1, 1982, the record contains one form affidavit from [REDACTED] dated on February 13, 1990. The affiant stated that the applicant was an employee of [REDACTED] from April 7, 1981 to January 9, 1983, as a laborer. The affiant also stated that the applicant resided at [REDACTED] Abilene, Texas during this time period. The affiant declared that the information was taken from his own personal knowledge. 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 of the applicant's employment, such as timesheets, salary receipts, office records, etc. The applicant did not provide any other evidence to support his claim of entry into the United States before January 1, 1982. The lack of other evidence to support his claim raises questions about the credibility of the applicant.

Also, the record contains a Form I-213, Record of Deportable Alien, which indicates that the applicant was arrested and charged with violating 18 U.S.C. 1028(a)(4) on January 15, 1989. On February 24, 1989, the applicant was sentenced to 60 days in confinement. In connection with this charge, the applicant provided a sworn statement, dated on January 15, 1989. When asked if he had ever been to the United States, the applicant stated that he "was in Minnesota for about 2 ½ months and about 2 years in Fort Worth, Texas, in 1985." In his own sworn statement, the applicant has contradicted his claim of entry into the United States prior to January 1, 1982.

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 above inconsistency.

In response to the NOID, counsel contended that the applicant did not recall ever signing a sworn statement declaring that he had entered the United States in 1985. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The applicant has not provided sufficient credible evidence of entry into the United States prior to January 1, 1982. The applicant has only submitted one affidavit to support his claim. This affidavit is inconsistent with the applicant's own sworn statement in the record. The discrepancy brings into question the credibility of the applicant. 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 one document which is inconsistent with his own testimony, it is concluded that he has failed to entry into the United States before January 1, 1982.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, 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.

Beyond the decision of the director, it is also noted that August 8, 1994, the applicant was arrested and charged with *assault*, a violation of section 22.01 of the Texas Penal Code, in the Hurst Municipal Court, City of Hurst, Texas (Docket # [REDACTED]). The record reflects that the applicant was sentenced to a fine of \$195.00. The applicant's two misdemeanor convictions do not render the applicant ineligible pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a).

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