



U.S. Citizenship
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[REDACTED]

FILE: [REDACTED]
MSC-01-300-60267

Office: LOS ANGELES

Date: OCT 22 2006

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 on your appeal. You no longer have a case pending before this office. If your appeal was sustained or the matter was remanded for further action, your file has been returned to the office that originally decided your case, and you will be contacted. If your appeal was dismissed, your file has been sent to the National Benefits Center. You are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Los Angeles, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act December 9, 2004. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant had not provided evidence to adequately establish that he resided in the United States in a continuous, unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act, or that he had been continuously physically present in the United States from November 6, 1986 through May 4, 1988, as required by section 1104(c)(2)(C) of the Life Act. In a Notice of Intent to Deny, issued on November 24, 2004, the director specifically found that (1) the affidavits submitted by the applicant did not contain "sufficient information and corroborative documents," and thus lacked probative value; (2) the copies of tax forms submitted were not accompanied by a tax printout to verify their veracity and only the first pages of each tax form were submitted, lacking both signature and date; and (3) "[w]ith the suspicion of the tax forms' veracity, it raises questions regarding the other documents contained in the file, including the copies of the receipts." The applicant submitted a rebuttal on December 3, 2004. The final Notice of Denial found that the applicant had failed to overcome the grounds for denial.

In rebuttal to the NOID, and on appeal,¹ the applicant addresses each basis for the denial: (1) he states that affidavits that were submitted in the 1990s were fill-in-the-blank forms, that applicants were not notified then of the need to submit corroborating evidence, and that such evidence is not available 14 years later; (2) he provides copies of all pages of his 1981-1988 taxes and a copy of a printout dated August 25, 2004 from the IRS that lists the years 1981-1992 and the notation after those years "yr-removed:1996," claiming that that proves he filed taxes for those years; and (3) he states that he believes that "the additional evidence provided regarding [his] taxes should erase the questions raised about other documents contained in [his] file, including copies of the receipts." In his Form I-290, Notice of Appeal, submitted on January 5, 2005, the applicant requests an additional 150 days to provide pertinent tax documents, based on communication received from the IRS on how long it would take to receive the documents he requested. He adds that he is also attempting to obtain his Social Security records for the years in question in response to a Request for Evidence from CIS. He attaches three new declarations, one dated in December 2005, and the other two in December 2004, from individuals who attest to having known the applicant since 1981, 1985 and 1986 respectively.

No additional filings related to this case have been received as of the date of this decision. However, the record includes the applicant's Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act) and accompanying filings. Relevant to this decision, the record of proceedings for the I-687 Application includes a letter from the IRS, dated September 24, 2004, stating, "We cannot provide the copy(s) of your tax return(s) for the year(s) 1981-1988. We searched our files using the information you gave us on the request and there was no record found of any tax return(s) being filed." The record also includes birth certificates for the applicant's children which show that the birth of his daughter [REDACTED] was registered in Mexico on August 8, 1986 and that "both" ("ambos" in

¹ The AAO notes that the director's final Notice of Denial did not address the issues raised by the applicant in his rebuttal to the NOID, simply concluding that the applicant had failed to overcome the grounds for denial as stated in the NOID. The applicant incorporates his prior rebuttal as part of his appeal.

Spanish) parents were present for the registration; and that the birth of his daughter was registered in Mexico on November 11, 1987 and, again, "both" parents were present.

An applicant for permanent resident status under section 1104 of the LIFE Act (Life Legalization applicant) 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 through May 4, 1988. See § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States, and is otherwise eligible for adjustment of status under section 1104 of the LIFE Act. 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 states that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* at 80. 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 either to request additional evidence, or if that doubt leads the director to believe that the claim is probably not true, to deny the application or petition.

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.13(f).

The issue in this proceeding is whether the applicant has overcome the bases for denial in the director's decision with sufficient credible evidence to demonstrate that he resided in the United States since a date prior to January 1, 1982 through May 4, 1988, as required under the LIFE Act. As noted above, the director found that the evidence submitted by the applicant as evidence of residence was deficient, particularly evidence of payment of taxes for the requisite years, affidavits and receipts.

Upon review of the evidence submitted on appeal and other relevant evidence in the record, the AAO finds that the applicant has failed to overcome the bases for denial. There is, in fact, clear evidence that contradicts the applicant's claims. He stated that the IRS provided proof that he filed taxes for the requisite years, yet the record includes a letter from the IRS, referenced above, that reported that there was no evidence that tax forms submitted by the applicant for the years 1981 through 1988 were ever filed. He also claimed on his "Statement of Absences," dated July 18, 2001 and submitted in connection with his I-485 LIFE Act Application, that he was absent from the United States only once, for 15 days in September 1987. However, the birth certificates of his daughters indicate that he was in Mexico for the registration of their births on August 8, 1986 and on November 11, 1987, contrary to his testimony. Regarding other evidence of residence at issue on appeal, the applicant simply submitted three additional letters, only one of which attested to his residence in the United States prior to 1985. Moreover, affidavits cannot overcome independent objective evidence that contradicts the applicant's claims or actually shows the applicant to have been outside the United States during the requisite period of residency.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In this case, there is competent objective evidence contradicting the applicant's claim that he resided for the requisite period in the United States.

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 inconsistencies noted in the record and objective evidence contrary to the applicant's claim, it is concluded that the applicant has failed to overcome the bases for denial set forth by the director and has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and maintained continuous, unlawful residence from such date through May 4, 1988, as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, 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.