

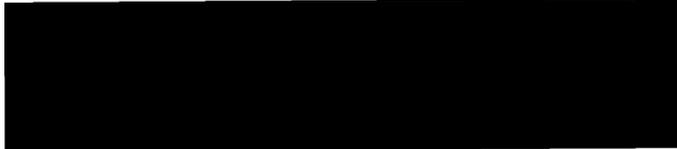
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services



L2

FILE:

MSC 02 101 60868

Office: NEW YORK

Date:

APR 02 2009

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. The file has been returned to the office which 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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, New York, New York, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status 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 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 regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

In the Notice of Intent to Deny (NOID), dated February 2, 2008, 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 noted that the record of proceedings reflects that the applicant first entered the United States on April 26, 1983 having been apprehended at entry. The director determined, therefore, that the applicant cannot establish the requisite continuous residence. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated March 1, 2008, the director denied the instant application based on the reasons stated in the NOID. The director noted that the applicant's response failed to overcome the reasons for denial stated in the NOID. The director also noted that in his response to the NOID the applicant disavowed his testimony that he gave when he was apprehended at entry stating that he made a statement that he first entered the United States on April 26, 1983 because he had been "extremely afraid."

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period. The applicant submitted letters of employment, and affidavits, as evidence to support his Form I-485 application. The AAO has reviewed the entire record. Here, the submitted evidence is neither probative, nor credible.

Counsel requests that the Service forgive the applicant's "error" wherein he stated that he first entered the United States on April 26, 1983. In effect, counsel implies that the evidence of record pertaining to the applicant admission on entry be disregarded as it is detrimental to the applicant. The applicant attests that he gave the statement when he was apprehended that he first entered the United States on April 26, 1983 because he was "extremely afraid." However, being afraid does not preclude the applicant from being truthful in his testimony. At this late stage, the applicant cannot avoid the record he has created. As such, it cannot be purged from the record. The AAO will, therefore, examine the entire record and make its determination of the applicant's eligibility based on the entire record as constituted.

Contrary to counsel's assertion, the applicant has provided questionable documentation. The applicant has submitted letters and affidavits in an attempt to establish his continuous residence since August 1980. However, the record of proceedings reflects that the applicant was apprehended at entry by the Border Patrol at Laredo, Texas, and was placed in proceedings, on April 27, 1983, at which time the applicant stated that he first entered the United States on April 26, 1983. The record also reflects that the applicant's passport was issued in Ecuador on April

2, 1983. Clearly, this evidence points to the applicant's presence in Ecuador until April 26, 1983. Yet, the applicant claims to have resided in the United States since August 1980.

In addition, the record reflects that pursuant to an Order of Deportation by an Immigration Judge, the applicant was deported to Ecuador on June 11, 1983. Despite this evidence, the applicant indicated on his Form I-687 application that he departed the United States, for Ecuador, on July 16, 1987; but, he does not indicate an entry into the United States between June 11, 1983 (the day he had been deported) and July 16, 1987 (the day he claimed he departed the United States).

The above discrepancies also cast doubts on whether any of the affidavits the applicant submitted to establish his continuous residence are genuine, and whether the applicant has been in the United States since August 1980, as he claims. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in his testimony and in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status during the requisite period.

The remaining evidence in the record does not pertain to the requisite period, and the additional documents, including the applicant's identity documents, do not establish the requisite continuous residence. The applicant has not submitted any additional evidence in support of his claim that he entered the United States prior to January 1, 1982, and he had resided continuously in the United States during the entire requisite period.

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.