



U.S. Citizenship  
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FILE:

MSC 01 331 60719

Office: NEW YORK

Date: MAR 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).

IN 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.

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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant admitted in a signed statement that he first entered the United States on March 24, 1990 and, therefore, the applicant failed to demonstrate that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988.

On appeal, the applicant provided the same response put forth in reply to the Notice of Intent to Deny.

An applicant for permanent resident status under section 1104 of the LIFE Act 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 and through May 4, 1988. Section 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 periods, is admissible to the United States under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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.

The record reflects that on November 18, 2000, at the John F. Kennedy International Airport, a Record of Sworn Statement in Affidavit Form was executed. The applicant while under oath, was

asked when did he first arrive in the United States and he stated March 24, 1990. The applicant was asked how he applied for his papers and he stated:

Everyone was talking about a case with CSS so I went to Immigration to do the application and they gave me a number and they called me three years after I came here and asked me for more proof and I told them whatever I had I gave them already.

The applicant was asked what happened after that and he stated:

I keep going to Immigration because I wanted papers until I met my lawyer. I explained to him I have been here since 1990 and that I applied for CSS and I don't have anything. He told me they denied CSS and that I can change to get another paper.

On September 8, 2007, the director issued a Notice of Intent to Deny, advising the applicant of his sworn statement above. The applicant was advised that his claim to have entered the United States by bus from Canada on January 1, 1981 was a prevarication. The applicant was further advised that he had not provided any primary evidence of his alleged entry on January 1, 1981. The applicant, in response, acknowledged that he signed the Form I-215W on November 18, 2000, but asserted, in pertinent part:

I do believe that there is a miscommunication between the immigration officer who took my testimony at the airport and the actual statement that I did not make over there. When I said to him that I did enter the United States on March 24, 1990, then I was talking in the sense of my first legal entry into the U.S. with a valid visa but not with my first illegal entry to the U.S. from Canada, which entry was dated on January 1<sup>st</sup> 1981.

Regarding the lack of evidence to support his application, the applicant asserted, in pertinent part:

It is difficult to come up with old evidence such leases, hospitals, or other official records that bear my name since for so long I've been living in the United States without any social security number or a valid identification card that would have enabled me to secure these legal documents and contracts under my name.

The only evidences I that could find were from American citizens who have known me in the U.S. for so many years.

The director, in denying the application, considered the applicant's response and noted that the Form I-215W contained no indication that the applicant was in the United States prior to January 1, 1982. The director determined that it was unlikely there was a miscommunication between the immigration officer and the applicant as the applicant verified the statements as his own and signed each of the five pages of the Form I-215W on November 18, 2000.

An inference cannot be drawn that the information or documentation submitted is now accurate simply because the applicant recants his admission. Even in cases where the burden of proof is upon the government, such as in deportation proceedings, a previous sworn statement voluntarily made by an alien is admissible, and is not in violation of due process or fair hearing. *Matter of Pang*, 11 I&N Dec. 213 (BIA 1965).

In light of his sworn statement, the documentary evidence submitted by the applicant, in an attempt to establish continuous residence in the United States during the requisite period cannot be considered as having any probative value or evidentiary weight.

The applicant has, therefore, failed to establish that he resided in continuous unlawful status in the United States from before January 1, 1982 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.