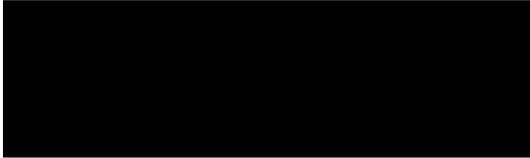




U.S. Citizenship
and Immigration
Services

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FILE: MSC 02 165 61142

Office: NEW YORK CITY

Date: **MAY 22 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: SELF-REPRESENTED

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 under the Legal Immigration Family Equity (LIFE) Act was denied by the director in New York City. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that he entered the United States before January 1, 1982 and resided continuously in an unlawful status from before January 1, 1982 through May 4, 1988. The director indicated that the applicant provided sufficient evidence to establish that he was residing in the United States for part of the required period for LIFE legalization – from 1983 onwards – but failed to establish his residence from before January 1, 1982 through 1983.

On appeal the applicant asserts that he has submitted sufficient credible evidence to establish that he meets the continuous residence requirement during the requisite period.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. *See* section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

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).

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.

The applicant, a native of Trinidad and Tobago who claims to have lived in the United States from before January 1, 1982, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on March 14, 2002. The record reflects that the applicant claimed to have entered the United States with his mother.

In a Notice of Intent to Deny (NOID) dated June 11, 2007, the director indicated that the evidence submitted by the applicant in support of his application credibly established that the applicant resided in the United States from 1983 onwards. However, the director citing the applicant’s testimony at his LIFE Legalization interview on May 4, 2004, that he first entered the United States in 1982, indicated that the applicant has failed to establish that he entered the United States before January 1, 1982, and is therefore ineligible for LIFE Legalization. The applicant was granted 30 days to submit additional evidence.

In response, the applicant submitted a photocopy of a statement from The City of New York Department of Health, Bureau for Handicapped Children, with a date of December 14, 1981, addressed to “Dear Parent” indicating that the applicant was allegedly given a hearing test by the department of health personnel at Jacobi Hospital on December 3, 1981.

On July 20, 2007, the director issued a Notice of Decision denying the application on the ground that the document submitted in response to the NOID was insufficient to overcome the grounds for denial.

On appeal the applicant denied the statement at his LIFE legalization interview that he entered the United States in 1982, and stated instead that he entered the United States in 1981. The applicant requested that he be given another opportunity to prove that he is eligible for the benefit sought. The AAO will conduct a *de novo* review of the evidence of record to determine

if the applicant has met his burden of proof that he entered the United States before January 1, 1982 and resided continuously in an unlawful status through May 4, 1988.

In accord with the director's decision, the AAO determines that the applicant has established his continuous residence in the United States during the years 1983-1988. The documentation pertaining to the applicant's medical and school records is credible evidence that the applicant resided in the United States from 1983 onwards. Specifically, the request from the New York City Board of Education dated February 3, 1983, that the applicant be examined for hearing test as part of his medical evaluation to register for school later that year; the medical report from [REDACTED] indicating that the applicant was examined at the Children's Evaluation and Rehabilitation Clinic in the Bronx on March 14, 1983; and the record from New York City Board of Education indicating that the applicant first entered the New York City Schools on June 7, 1983, and continued on to Mill Neck Manor School for the Deaf, and graduated on June 15, 1996.

The only document the applicant submitted in support of his claim that he resided in the United States from before January 1, 1982, consists of a photocopied letter from The City of New York Department of Health, with a date of December 14, 1981. The letter does not appear to be genuine. The letter was supposedly addressed to the applicant's parent, yet no name or address is indicated. The letter referred to other documents relating to the examination of the applicant at Jacobi hospital on December 3, 1981, such as, a copy of the alleged Hearing Testing Workshop of the applicant, the complete name and address of the hearing and speech center(s) that the applicant was referred to, and a set of instructions for the hospital which the applicant was referred to for follow up, which the applicant did not submit with the letter. The absence of any of the documents referred to in the letter casts a serious doubt on the credibility of the letter as evidence of the applicant's residence in the United States from before January 1, 1982. The original of the letter is not submitted in the file for proper verification. Furthermore, the letter is inconsistent with the medical report from [REDACTED], dated March 14, 1983, indicating that the applicant and his family came from Trinidad in December 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 without competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that she resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act. Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

The appeal will be dismissed, and the application denied.

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