



U.S. Citizenship  
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FILE:

MSC-03-211-60426

Office: NEW YORK

Date:

OCT 20 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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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.

Perry Rhew  
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 as he found that none of the affidavits purporting to attest to the applicant's residence in the United States during the requisite period was credible. The director also found evidence in the record suggesting that the applicant might not have been truthful about his marital status and whether or not he has a child. For these reasons, the director concluded that the applicant had failed to establish by a preponderance of the evidence that he met the requirements to adjust status under the LIFE Act.

On appeal, counsel for the applicant filed a Freedom of Information Act (FOIA) request and stated that he would submit a brief 30 days after receiving the complete record of proceedings. The record reflects that the FOIA request was processed and completed on July 28, 2009. On September 9, 2009, the AAO received the brief from counsel.

Counsel generally contends in his brief that the applicant has provided sufficient credible evidence to meet his burden of proof. Further, counsel states that the director should not deny the application solely because the applicant only submitted affidavits.

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).

The primary 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 from before January 1, 1982, through May 4, 1988.

The applicant stated during the interview that he first entered the United States from Mexico in December 1981 without inspection and that he had resided continuously in the United States throughout the requisite period. To prove that he is eligible for permanent resident status under the LIFE Act, the applicant submitted two affidavits.

states in his affidavit that he spent time with the applicant at the Hilton Hotel during the 1982 New Year celebration in Miami, Florida. indicates in his affidavit that he first met the applicant in December 1981 in Miami, Florida. Neither nor however, describes with any detail how he first met the applicant in the United States or how he dates the beginning of his acquaintance with the applicant in 1981 or 1982. Neither states where the applicant lived and worked or what the applicant did with his time, his activities, friendships, or other particulars of his residence in the United States during the requisite period. The lack of detail is significant, considering that both affiants claim they have known the applicant since 1981 or 1982. The affidavits will be given nominal weight as evidence of the applicant’s residence in the United States since before January 1, 1982.

While the application should not be denied solely because the applicant has only submitted affidavits, the submission of affidavits alone will not always be sufficient to support the applicant’s claim. The sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. Here, the affiants’ brief references to having met the applicant in 1981 or 1982 without further detailed information describing the relationship with the applicant and without any corroboration from other contemporaneous documents are insufficient to support the applicant’s claim of continuous residence in the United States throughout the requisite period.

In adjudicating the application, the director found evidence in the record suggesting that the applicant might not have been truthful about his marital status and whether or not he has a child. While the inconsistencies in the record on this matter do not relate to the applicant's eligibility for the benefit sought, they damage his credibility. No explanation has been provided on appeal to address or rebut the director's finding on this subject. The evidence submitted, when combined with other evidence in the record, does not establish by a preponderance of the evidence that the applicant entered the United States before January 1, 1982 and that he has resided continuously in the United States throughout the requisite period.

The noted inconsistencies coupled with the lack of detail in the affidavits and the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period detract from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), 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 in the record and the lack of credible supporting documentation, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period as required under Section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under Section 1104 of the LIFE Act on this basis.

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