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



**U.S. Citizenship  
and Immigration  
Services**

[REDACTED]

L2

FILE:

[REDACTED]

Office: ATLANTA

Date: **SEP 10 2010**

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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that 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.

*Elizabeth McCormack*

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

The director initially denied the application, finding the applicant failed to establish he made a timely claim for class membership. The applicant appealed the decision. The AAO remanded the case, instructing the director to consider all the evidence submitted in support of the applicant's claim. The director found that the applicant made a timely claim to class membership but then denied the application, finding the applicant failed to demonstrate that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

An applicant for permanent resident status 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. 8 C.F.R. § 245a.11(b).

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 issue in this proceeding is whether the applicant established he: (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status since such date and through May 4, 1988.

The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of rent receipts, his United States citizen children's birth certificates, copies of tax returns and Forms W-2, a single postmarked envelope, and an employer's letter.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must include: (A) Alien's address at the time of employment; (B) Exact period employment; (C) Periods of layoff; (D) Duties with the company; (E) Whether or not the information was taken from official company records; and (F) Where the records are located and whether the Service may have access to the records. If the records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of subsections (E) and (F).

The employer's letter does not fully comply with the above cited regulation because it does not provide the applicant's address at the time of employment; or provide the applicant's exact periods of employment and layoff, if any. Given these deficiencies, this letter is of minimal probative value in supporting the applicant's claims that he entered the United States before January 1, 1982 and continuously resided in the United States for the requisite period.

The applicant submitted copies of tax returns and Forms W-2 for the years 1984 through 1988. He failed to submit proof he filed the tax returns. He listed two dependents on his 1984 tax return, [REDACTED] and [REDACTED]; however, according to the birth certificate on file, [REDACTED] was not born until 1986.

This contradiction is material to the applicant's claim in that it has a direct bearing on the applicant's residence in the United States during the requisite period. The tax returns provided by the applicant, therefore are deemed not credible and shall be afforded little weight. 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 unless the petitioner submits competent objective evidence pointing to where the truth lies. 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. See *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The record contains no explanation for these inconsistencies.

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.

It is further noted that the applicant was arrested on July 24, 1988 in Azusa, California and charged with attempted murder in violation of section 187 of the California Penal Code. The record shows that the Gainesville Police Department arrested the applicant on May 24, 2004 and charged him with driving while under the influence of alcohol. He was convicted on this charge on January 13, 2005. Docket No. [REDACTED]

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