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U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**

L2



Date: **OCT 13 2011**

Office: **FRESNO**

FILE: 

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

The director denied the application, finding the applicant had failed to establish that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The director noted that the applicant indicated in a sworn statement that he was absent from the United States from 1987 to 1990 or 1991. The director further determined that the applicant was inadmissible because he sought to procure a visa by fraud or willful misrepresentation of a material fact in connection with a Form I-130 spousal petition filed on his behalf.

On appeal, counsel for the applicant asserts that the applicant met his burden of proof and denies that he engaged in marriage fraud. Further, counsel states that the applicant was confused by extensive questioning about the past.

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 through May 4, 1988. See § 1104(c)(2)(B) of the LIFE Act and 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 states 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 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 to either request additional evidence, or if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

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).

On or about September 20, 1990, the applicant applied for class membership in a legalization class-action lawsuit and submitted Form I-687, Application for Status as a Temporary Resident. On September 16, 1997, a United States citizen filed a Form I-130 petition on behalf of the applicant seeking to classify him as an immediate relative (spouse).¹ On May 13, 2002, the applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

The applicant filed the following documents in support of his claim that he resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988:

- Affidavits from [REDACTED] which indicate that they know the applicant resided in the United States during the requisite period.
- Affidavits from [REDACTED] and [REDACTED] that all attest that they became acquainted with the applicant through the [REDACTED] Sports Club and attest to his residence in the United States during the requisite period.

These affidavits fail to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.

None of the witness statements provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

¹ The director of the San Francisco office denied the Form I-130 petition on August 14, 2003 and found that the marriage had been entered into for the sole purpose of obtaining an immigration benefit.

The applicant asserts that he has resided in the United States since 1980. At an interview on November 19, 2010, the applicant stated that he went to Canada in 1987 and worked on a farm for about three years. On appeal, the applicant failed to reconcile this discrepancy. Counsel states that the applicant denies saying that he was out of the United States from 1987 through the end of the requisite period, that he could not read or understand the statement he signed at his interview and that his translator did not translate the statement. The AAO notes that the interviewing officer took contemporaneous notes during the interview and based the applicant's statement upon the applicant's testimony. The record contains an oath, signed by a translator, who accompanied the applicant to his interview.

Moreover, in a separate statement dated December 10, 2003 the applicant stated that he went to Canada from May 4, 1987 – June 7, 1987 to visit his friend and from there traveled to India to get married. A divorce decree between the applicant and [REDACTED] states that the couple married on May 29, 1987 in India and that they resided together as husband and wife until October 27, 1995. This evidence is inconsistent with the applicant's statement at the interview that he worked at a farm in Canada for three years beginning in 1987.

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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. at 582. No independent evidence resolves the internal inconsistencies in the applicant's testimony with respect to his absence from the United States from sometime in 1987 through the end of the requisite period.

The applicant did not otherwise establish that he resided continuously in the United States during the requisite period.

Thus, it is found that the applicant has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988. Accordingly, the applicant is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

Second, the applicant is ineligible for adjustment to permanent resident status under the LIFE Act because he has been found inadmissible. In a decision dated April 27, 2003, the director denied the Form I-130 petition filed on the applicant's behalf, finding that the applicant (beneficiary) and the Form I-130 petitioner had engaged in marriage fraud. Although the applicant filed a Form I-690, application for a waiver, it has not been approved. For this additional reason, the application may not be approved.

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