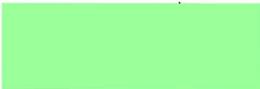


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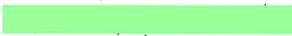
U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



Date: Office: NEW YORK

FILE: 

JAN 31 2013

IN RE: Applicant: 

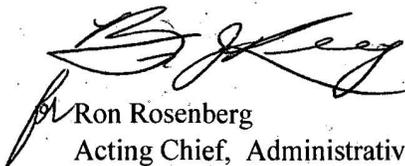
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), *amended by* Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. 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.


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the New York Field Office Director, 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 throughout the requisite period. Specifically, the director found the evidence insufficient and inconsistent.

On appeal, the applicant provides a statement to try to resolve the inconsistencies in the record.

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).

Here, the submitted evidence is not relevant, probative and credible.

In 1991, 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 9, 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:

- A declaration from [REDACTED]
- A declaration from [REDACTED]

On June 22, 2012, the director issued a Notice of Intent to Deny (NOID). She concluded that the applicant had failed to submit adequate, credible evidence of continuous, unlawful residence in the United States from prior to January 1, 1982 through May 4, 1988. The director noted that the applicant testified that he had been absent from the United States from September 12, 1987 to October 28, 1997, a period of 46 days. The director further determined that the applicant must have obtained his passport in India in 1983, and therefore his testimony regarding the number of absences was inconsistent. Finally, the director noted that the applicant signed a sworn statement declaring he had been living in the United States "approximately 13 years," which would have meant he began residing in the United States in 1985. In the same statement, the applicant indicated he first entered the United States in July 1986 or 1987.

In a rebuttal to the NOID, the applicant asserted that the interviewing officer must have misunderstood him as to the dates of his absence. He further asserted that he obtained a passport from India without traveling to India. Finally, he asserts that he erred when saying he had been living in the United States for about 13 years and that he first entered in the mid-1980s because he was tired.

On October 1, 2012, the director denied the application based on the reasons set out in the NOID.

On appeal, the applicant submits a brief, and a witness statement that relates to the late 1990s.

In response to the NOID and on appeal, the applicant had the opportunity to provide additional evidence of his residence in the United States during the statutory period. However, on appeal the applicant provided only evidence that is not probative.

The applicant's inconsistent testimony as to when he first entered the United States (1981, 1985, 1986 or 1987) undermines the credibility of the applicant's claim.

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.

The remaining supporting evidence is insufficient evidence of continuous residence. In his declaration, [REDACTED] of Euless, Texas stated that he has known the applicant from India and that upon the applicant's arrival to the United States, he phoned the declarant. He fails to state how he recalls the date of the phone call. Similarly, [REDACTED] stated that the applicant is his cousin and that they frequently spoke on the phone. He mentions that the applicant attended the declarant's wedding in Chicago in 1992. He provides no additional details about his contact with the applicant in the United States.

In sum, the applicant did not provide sufficient evidence of having resided in the United States during the statutory 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.

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