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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

[Redacted]

FILE: [Redacted]

Office: Phoenix

Date:

IN RE: Applicant: [Redacted]

DEC 03 2004

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:

[Redacted]

PHOTO COPY

Confidential data deleted

INSTRUCTIONS:

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Phoenix, Arizona, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director concluded that the applicant had exceeded the forty-five (45) day limit for a single absence, as well as the aggregate limit of one hundred and eighty (180) days for total absences, from the United States during this period, as set forth in 8 C.F.R. § 245a.15(c)(1). The district director further determined that the applicant failed to establish that he satisfied the “basic citizenship skills” required under section 1104(c)(2)(E) of the LIFE Act. Therefore, the district director concluded the applicant was ineligible for permanent resident status under the LIFE Act and denied the application.

On appeal, counsel asserts that the district director failed to consider the statement provided by the applicant in response to the notice of intent to deny, in which he specifically denied making any statements to the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services or CIS) regarding his absences from the United States.

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).

“Continuous unlawful residence” is defined at 8 C.F.R. § 245a.15(c)(1), as follows: An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded *forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed.

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. 8 C.F.R. § 245a.12(e). When something is to be established by a preponderance of evidence it is sufficient that the proof only establish that it is *probably* true. *See Matter of E-- M--*, 20 I. & N. Dec. 77 (Comm. 1989). Preponderance of the evidence has also been defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black’s Law Dictionary 1064 (5th ed. 1979).

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).

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 applicant is a class member in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (INA) on April 9, 1990. at part #35 of the Form I-687 application where applicants were asked to list all absences from the United States beginning from January 1, 1982, the applicant listed three absences from this country when he traveled to Mexico to visit family from April 1984 to April 1984, from

May 1985 to May 1985, and from September 1987 to September 1987. The applicant failed to include any documentation to support his claim of continuous residence in this country from prior to January 1, 1982 with his Form I-687 application.

Subsequently, on January 3, 2002, the applicant filed his Form I-485 LIFE Act application. In support of his claim to have continuously resided in the United States for the requisite period the applicant submitted only a single affidavit of residence signed by [REDACTED]. In her affidavit [REDACTED] stated that the applicant had resided with her at an address in Van Nuys, California from 1981 to 1987. However, it must be noted that the applicant indicated that [REDACTED] was his sister on the previously submitted Form I-687 application.

The record further shows that the applicant subsequently appeared for the requisite interview relating to his LIFE Act application at the Phoenix District Office on February 4, 2003. During the course of this interview, the applicant testified that he been absent from the United States on three separate occasions in the period from January 1, 1982 to May 4, 1988, and that the length of these absences ranged from two to three months up to three to four months. In addition, the record contains a signed sworn statement from the applicant in his native language of Spanish in which the applicant specifically admitted that the he had been absent from the United States on three separate occasions in the requisite period when he visited his family and that each absence had been about three months in length.

In response to the notice of intent to deny issued on October 7, 2003, the applicant submitted a statement in which he asserted that he told the interviewing officer he had been absent from this country three different times during the requisite period but that each absence was two to four weeks in length rather than two, three, or four months. The applicant contended that the interviewing officer must have misunderstood his answer. While the applicant's explanation could be considered reasonable if it applied only to verbal testimony provided at his interview, it does not address the fact that he signed a sworn statement written in his native language of Spanish in which he acknowledged that each absence from the United States had been about three months in length.

On appeal, counsel asserts that the district director failed to consider the statement provided by the applicant in response to the notice of intent to deny, in which he specifically denied making any statements to the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services or CIS) regarding his absences from the United States. However, the applicant's subsequent statement of denial cannot be considered sufficient to overcome the fact that he previously provided a signed sworn statement in his native language of Spanish in which admitted that each of his three absences from this country had been about three months in length. Neither counsel nor the applicant provides any compelling reason or independent evidence as to why the applicant's testimony contained in the sworn statement relating to his absences from the United States should be disregarded.

The applicant in this case asserts that he has resided continuously in the United States since 1981 - a period in excess of 22 years. However, the applicant has submitted no contemporaneous documentation to support his claim of residence in this country. In addition, the applicant has failed to provide any evidence of residence for the period from 1987 to May 4, 1988. A review of the evidence submitted by the applicant reveals that he provided only a single affidavit in support of his claim of continuous residence in the United States for the period from prior to January 1, 1982 to 1987. Furthermore, it must be noted that the sole affidavit provided by the applicant appears to be from his sister Teresa Zuniga, a family member who must be viewed as having an

interest in the outcome of proceedings concerning her brother, rather than an independent and disinterested party. The applicant provided no explanation as to why he did not submit affidavits from individuals with little or no interest in these proceedings such as neighbors, friends and acquaintances, in addition to the affidavit from his family member.

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. 582 (BIA 1988).

Given the complete absence of contemporaneous documentation pertaining to this applicant, the applicant's admissions in his sworn statement regarding the length of absences from the United States, and reliance upon a supporting document with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988.

Under section 1104(c)(2)(E)(i) of the LIFE Act ("Basic Citizenship Skills"), an applicant for permanent resident status must demonstrate that he or she:

- (I) meets the requirements of section 312(a) of the Immigration and Nationality Act (8 U.S.C. 1423(a)) (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States); or
- (II) is satisfactorily pursuing a course of study (recognized by the Attorney General) to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

Under section 1104(c)(2)(E)(ii) of the LIFE Act, the Attorney General may waive all or part of the above requirements for aliens who are at least 65 years of age or developmentally disabled.

The applicant, who is neither 65 years old nor developmentally disabled, does not qualify for either of the exceptions in section 1104(c)(2)(E)(ii) of the LIFE Act. Nor does he satisfy the "basic citizenship skills" requirement of section 1104(c)(2)(E)(i)(I) of the LIFE Act because he does not meet the requirements of section 312(a) of the Immigration and Nationality Act (INA). An applicant can demonstrate that he meets the requirements of section 312(a) by "[s]peaking and understanding English during the course of the interview for permanent resident status" and answering questions based on the subject matter of approved citizenship training materials, or "[b]y passing a standardized section 312 test . . . by the Legalization Assistance Board with the Educational Testing Service (ETS) or the California State Department of Education with the Comprehensive Adult Student Assessment System (CASAS)." 8 C.F.R. § 245a.3(b)(4)(iii)(A)(1) and (2).

Pursuant to 8 C.F.R. § 245a.17(b), the applicant was interviewed twice in connection with her LIFE application, on February 4, 2003 and again on October 1, 2003. On both occasions, the applicant failed to demonstrate a minimal understanding of English and minimal knowledge of United States history and government. Furthermore, the applicant has not provided evidence of having passed a standardized citizenship test, as permitted by 8 C.F.R. § 312.3(a)(1).

The remaining question, therefore, is whether the applicant satisfies the alternative "basic citizenship skills" requirement of section 1104(c)(2)(E)(i)(II) of the LIFE Act. The "citizenship skills" requirement of section

1104(c)(2)(E)(i)(II) is defined by regulation in 8 C.F.R. § 245a.17(2) and (3). As specified therein, an applicant for LIFE Legalization must establish that:

He or she has a high school diploma or general education development diploma (GED) from a school in the United States. . . . 8 C.F.R. § 245a.17(2), or

He or she has attended, or is attending, a state recognized, accredited learning institution in the United States, and that institution certifies such attendance. The course of study at such learning institution must be for a period of one academic year (or the equivalent thereof according to the standards of the learning institution) and the curriculum must include at least 40 hours of instruction in English and United States history and government. . . . 8 C.F.R. § 245a.17(3).

The applicant in this case does not have a high school diploma or a GED from a United States school, and therefore does not satisfy the regulatory requirement of 8 C.F.R. § 245a.17(2).

In response to the notice of intent to deny, the applicant submitted a document signed by [REDACTED] teacher for [REDACTED] which indicated that the applicant was to begin this class on October 16 2003. However, this document reflects only the applicant's enrollment in such classes and does not establish that he has in fact attended, or is attending, such class at Friendly House. Furthermore, the document contains no indication that this institution certifies the applicant's attendance in such classes as required by 8 C.F.R. § 245a.17(3). Moreover, the document does not reflect that the course of study lasted for a one-year period as required by the regulation or that the classes are composed of both English language and citizenship components, with instruction in United States history and government. Thus, the document provided by the applicant cannot be considered as sufficient to establish his compliance with the alternate requirements contained at 8 C.F.R. § 245a.17(3).

For the reasons discussed above, the applicant does not satisfy the "basic citizenship skills" requirement of section 1104(c)(2)(E)(i)(II) of the LIFE Act because he has failed to demonstrate that he "is satisfactorily pursuing a course of study (recognized by the Attorney General) to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States."

As previously discussed, the applicant failed to meet the "basic citizenship skills" requirement of section 1104(c)(2)(E)(i)(I) of the LIFE Act because at his two interviews he did not demonstrate a minimal understanding of English and a minimal knowledge of United States history and government.

Therefore, the applicant does not satisfy either alternative of the "basic citizenship skills" requirement set forth in section 1104(c)(2)(E)(i) of the LIFE Act. Accordingly, the applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act on this basis as well.

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