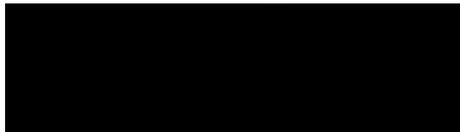


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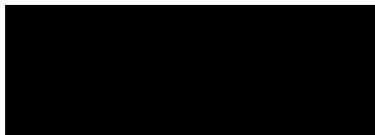
Office: Los Angeles

Date:

IN RE: Applicant:

PETITION: 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.

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, Los Angeles, California, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had not demonstrated that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act. This decision was based on the district director's conclusion 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).

On appeal, the applicant acknowledges that he had been absent from the United States on visits to Mexico in 1982, 1986, and 1988, but contends that he was not absent from this country in either 1983 or 1984.

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. 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).

When something is to be established by a preponderance of the evidence it is sufficient that the proof establish that it is probably true. *See Matter of E-- M--*, 20 I. & N. Dec. 77 (Comm. 1989).

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. 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 or about May 20, 1996. 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 one absence from this country when he traveled to Mexico to visit his sick mother from May 15, 1987 to May 30, 1987.

The record shows that the applicant subsequently filed his Form I-485 LIFE Act application on December 17, 2001. With the Form I-485 LIFE Act application, the applicant included a Form G-325A, Record of Biographic Information, in which he specified that he had been married in San Luis Potosi, Mexico on February 15, 1984.

A review of the record reveals that the applicant appeared for the requisite interview relating to his LIFE Act application at the Los Angeles District Office on June 12, 2003. During the course of this interview, the applicant testified that he had been absent from the United States for one month to visit his father in Mexico in 1982, for six weeks to visit his mother in Mexico in 1986, and for two months in 1988. While the applicant failed to mention that he been absent from this country in 1983, he testified that he stayed with his wife in Mexico for six months after she had become pregnant with their daughter, [REDACTED] in 1983. Moreover, the record contains a signed sworn statement that the applicant wrote in his own hand in his native language of Spanish that reads as follows: "Yo fui a Mexico cuando mi esposa estava embarazada en 1984 estuve 6 meses." The English translation of the applicant's statement is as follows: I went to Mexico when my wife was pregnant in 1984 [and] I was there for six months.

On November 25, 2003, the district director issued a notice of intent to deny informing the applicant that his application would be denied as a result of the testimony and sworn statement he provided at the interview regarding his absences from the United States in the requisite period. The applicant was granted thirty days to respond to the notice and overcome the stated basis for the intended denial.

In response, the applicant submitted a statement in which he acknowledged that he had been absent from the United States on several occasions in the period from January 1, 1982 to May 4, 1988, but declared that all of his absences were to due to his mother becoming ill with cancer in 1982. However, a review of the applicant's testimony and the sworn statement he previously provided on June 12, 2003, reveals that he made no mention that he had been absent from this country because his mother had been ill, but rather indicated that he had been absent to visit his father, mother, and pregnant wife. In addition, the applicant's statement and explanation cannot be reconciled with the fact that he specifically admitted he had been married in San Luis Potosi, Mexico on February 15, 1984 on the Form G-325A that was included with his LIFE Act application.

The district director determined that the applicant had failed to rebut the information contained in the notice and denied the application on January 6, 2004.

On appeal, the applicant reiterates his claim to have continuously resided in the United States since prior to January 1, 1982. The applicant acknowledges that he had been absent from the United States on visits to Mexico in 1982, 1986, and 1988, but contends that he was not absent from this country in either 1983 or 1984. However, the applicant's contention that he was not absent from the United States in 1983 and 1984 is directly contradicted by the fact that he specified that he had been married in San Luis Potosi, Mexico on February 15, 1984 on the Form G-325A that was included with his LIFE Act application. The applicant's contention is also directly contradicted by his sworn statement of June 12, 2003, in which he admitted that he went to visit his pregnant wife in Mexico in 1984, and then remained there with her for six months. The applicant fails to provide any compelling reason as to why such testimony relating to his absences from this country should be disregarded.

Even in cases where the burden of proof is upon the government, such as in deportation proceedings, a previous sworn statement voluntarily made by an alien is admissible, and is not in violation of due process or fair hearing. *Matter of Pang*, 11 I. & N. Dec. 213 (BIA 1965).

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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).

The applicant has specifically admitted that he exceeded the 45 day limit for a single absence, as well as the 180 day aggregate limit for total absences, from this country when departed the United States to visit his pregnant wife in Mexico in 1984, and then remained there with her for six months. The applicant has also acknowledged additional absences from this country from January 1, 1982 to May 4, 1988 for periods ranging from one to two months. The applicant has failed to establish having resided in continuous unlawful status in the United States from prior to January 1, 1982 through May 4, 1988, 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.

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