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U.S. Citizenship
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FILE:



Office: Los Angeles

Date: MAR 07 2005

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, 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 had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. The application was also denied due to the applicant having been convicted of criminal offenses rendering him ineligible for adjustment to permanent resident status under the LIFE Act.

On appeal, counsel for the applicant asserts that the denial of the application should be set aside as the applicant has sufficiently addressed all the issues enumerated in the notice of intent to deny which served as the basis for denying the application.

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. 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).

An alien who has been convicted of a felony or of three or more misdemeanors committed in the United States is ineligible for adjustment to LPR (legal permanent resident) status. 8 C.F.R. § 245a.18(a)(1).

"Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under 8 C.F.R. 245a.1(p). For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. 245a.1(o).

In an attempt to establish continuous unlawful residence since prior to January 1, 1982, the applicant submits the following:

- A letter [redacted] Admissions/Records Coordinator, Santa Ana College, attesting to the applicant having enrolled at that institution's Continuing Education Division from the Summer Semester 1985 through the Spring Semester 1986;

- An employment letter from [REDACTED] Pacific Choice Brands, Fresno, California, indicating the applicant performed 15 days of seasonal agricultural employment from April 21, 1986 to May 9, 1986;
- An I-705 affidavit from Brandt Farms, Inc., Tulare, California, attesting to the applicant having performed 64 days of agricultural employment from May 1, 1986 to May 1, 1987;
- An earnings statement from L&L Agricultural Labor Service, Parlier, California, indicating the applicant performed agricultural duties from August 27, 1986 to September 9, 1986;
- An I-705 affidavit from [REDACTED] of Superior Fence Company, Santa Ana, California, attesting to the applicant having performed 20 days planting trees from May 1, 1985 to May 1, 1986.
- A 1987 W-2 Wage and Tax Statement from Atlas Oil Co., Riverside, California, made out to the applicant; and
- A photocopy of a page from the applicant's 1987 U.S. Income Tax return.

The regulations at 8 C.F.R. § 245a.2(d) provide a list of documents that may establish continuous residence and specify that "any other relevant document" may be submitted. The applicant in this case has provided employment letters and affidavits which could possibly be considered as evidence of continuous residence during the period under discussion. In the Notice of Intent to Deny, however, the district director determined that the evidence submitted in support of the application failed to establish that the applicant had entered *prior to* January 1, 1982, as required by 8 C.F.R. § 245a.11(b) for eligibility to adjust to permanent residence under the LIFE Act. On the applicant's LIFE Application, he indicated the date he last entered the U.S. was September 1981. However, at his October 29, 2002 adjustment interview, taken under oath in the presence of an examining district officer, the applicant stated he entered the U.S. from Mexico in March 1981 and that he has not returned to Mexico since that time. However, during the same interview, the applicant admitted having fathered two children, both of whom were born in Mexico on April 14, 1986. In addition, on the applicant's Form I-700 Application for Temporary Resident Status as a Special Agricultural Worker, the applicant indicated that he last entered the U.S. on August 15, 1985. The director cites these contradictions as raising questions regarding the credibility of the applicant's claim.

In response to the notice of intent, counsel asserts that the applicant's statement at his interview that he first entered the U.S. in March 1981 is not inconsistent with his subsequent statement on his I-700 that his last entry to the U.S. occurred on August 15, 1985. Moreover, the applicant's August 15, 1985 return to the U.S. occurred after a 15-day departure to Mexico, during which the applicant fathered the two children born nine months later on April 15, 1986. Counsel asserts that this information is consistent with everything the applicant indicated on his I-700 and other documentation.

It is conceded that the applicant's trip to Mexico in August 1985 is not inconsistent with his two children subsequently having been born on April 15, 1986. However, as observed in the notice of intent, there are significant contradictions in the applicant's claim and documentation. The applicant indicated on his LIFE Application, which was completed July 6, 2001, that his date of *last* entry to the U.S. was September 1981.

The applicant also specified at his adjustment interview that, after his 1981 entry, he had not left the U.S. It is also noted that the applicant submitted a personal affidavit dated July 5, 2001, in which he specified that he was not outside the U.S. from the time he arrived prior to January 1, 1982 through May 4, 1988. As indicated on the notice of intent, this information is directly contradictory with that provided in other documentation included in the record.

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).

As stated above, the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. In this case, the applicant has submitted no third party statement or affidavit or contemporaneous evidence to indicate he resided in the U.S. prior to 1985. Nor has counsel or the applicant endeavored to explain, address or resolve the aforementioned discrepancies in the record, which, in turn, seriously diminish the credibility of the applicant's claim and supporting documentation.

Given the applicant's failure to establish his entry into the U.S. and his continuous residence from prior to January 1, 1982 through May 4, 1988, along with his inability to credibly resolve the inconsistencies and discrepancies raised in his claim and supporting documentation, it is concluded that he has failed to establish continuous residence in an unlawful status from prior to January 1, 1982 through May 4, 1988, as required. Accordingly, the applicant is ineligible for permanent resident status under section 1104(c)(2)(B) of the LIFE Act.

The application was also denied due to the applicant having been convicted of criminal offenses rendering him ineligible for adjustment to permanent resident status under the LIFE Act. The record reveals that, on September 5, 1997, the applicant was convicted by the Superior Court of California, County of Orange, of having committed the following misdemeanors:

- Contributing to the delinquency of a minor, in violation of section 272 of the California State Penal Code;
- Burglary, in violation of section 459-460 (B) of the California State Penal Code; and
- Petty Theft, in violation of section 488 of the California State Penal Code.

On appeal, counsel for the applicant asserts that all three misdemeanor convictions arose from a single incident or occurrence. Citing the case of *Matter of Adetiba*, 20 I&N Dec. 506 (BIA 1992), counsel asserts that, as the applicant's convictions arose from a single incident of misconduct, the applicant has actually committed only one misdemeanor offense. However, notwithstanding counsel's assertions, the matter cited by counsel has no applicability to the present case as it relates to section 241a(2)(A)(ii) of the INA, which pertains to an alien in deportation proceedings. The present case, however, relates an applicant applying for adjustment to permanent residence under the LIFE Act. As set forth in 8 C.F.R. § 245a.18(a)(1), an alien who has been convicted of three or more misdemeanors is simply ineligible for adjustment to LPR (legal

permanent resident) status. Accordingly, due to his three misdemeanor convictions, the alien is also statutorily ineligible under 8 C.F.R. § 245a.18(a)(1) for adjustment to permanent resident status under the LIFE Act.

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