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U.S. Citizenship
and Immigration
Services

22

[Redacted]

FILE: [Redacted]

Office: Los Angeles

Date: MAR 16 2005

IN RE: Applicant: [Redacted]

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:

[Redacted]

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 from the United States during this period, as set forth in 8 C.F.R. § 245a.15(c)(1).

On appeal, counsel reiterates the applicant's claim of continuous residence in the United States from January 1, 1982 to May 4, 1988. Counsel indicates that a brief and/or additional evidence would be forthcoming within thirty days of receipt of the appeal. However, as of the date of this decision, neither the applicant nor counsel has submitted a statement, brief, or evidence to supplement the appeal. Therefore, the record shall be considered complete.

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 March 2, 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 one absence from this country when he traveled to Mexico to visit his ill father from January 1, 1988 to January 30, 1988. The applicant submitted five affidavits of residence and three employment letters in support of his claim of continuous residence in this country from prior to January 1, 1982 to May 4, 1988.

The record shows that the applicant subsequently filed his Form I-485 LIFE Act application on August 7, 2001. In support of his claim of continuous residence in the United States for the requisite period, the applicant included copies of previously submitted documentation cited above, as well as tax documents for the 1986 tax year. In addition, the applicant also provided copies of the Mexican birth certificates for his daughter, [REDACTED] and his son, [REDACTED] respectively. The applicant's daughter's birth certificate reflects that she was born April 11, 1982 in Naucalpan de Juarez, Mexico, and that her birth was subsequently registered in this same municipality on July 3, 1982. This birth certificate contains the applicant's signature demonstrating that he was present in Mexico to register the birth of his daughter on July 3, 1982. The applicant's son's birth certificate reflects that he was born May 8, 1985 in Cuauhtemoc, Mexico, and that his birth was subsequently registered in the municipality of Naucalpan de Juarez, Mexico on August 3, 1985. This birth certificate contains the applicant's signature demonstrating that he was present in Mexico to register the birth of his son on August 3, 1985. In addition, both documents list the applicant's domicile as an address in Mexico, rather than an address in the United States. These documents clearly establish that the applicant was absent from the United States for undetermined periods in both 1982 and 1985, as well as his previously admitted absence from January 1, 1988 to January 30, 1988. However, the applicant provided no explanation as to why he had failed to list these two additional absences at part #35 of the Form I-687 application.

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 January 8, 2002. During the course of this interview, the applicant initially reiterated his claim that he had been absent from the United States only one time during the period from 1981 to 1988. The applicant also testified that he did not return to Mexico subsequent to the birth of his daughter in 1982, or after his son was born in 1985. However, the record shows that the applicant significantly changed his testimony after the interviewing officer confronted the applicant with the fact that the birth certificates of his daughter and son clearly show that he was absent from the United States when he signed these documents in Mexico on July 3, 1982 and August 3, 1985, respectively. Specifically, the applicant admitted that he had been absent from the United States for three months in 1985, but that he could not remember any of the circumstances surrounding his absence from this country in 1982.

On March 31, 2004, 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 he provided at the interview regarding his absences from the United States in the requisite period. While the district director also cited deficiencies in other documentation the applicant had provided in support of his claim of continuous residence in the United States for the period in question, such deficiencies are minimal and unrelated to his absences from this country from January 1, 1982 to May 4, 1988. Therefore, the perceived discrepancies cited by the district director relating to applicant's supporting documents need not be discussed further. 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 when he returned to Mexico from June 25, 1982 to July 20, 1982, and again from May 6, 1985

to June 5, 1985. The applicant asserted that his son's birth had been registered on June 3, 1985, rather than August as cited in the notice of intent. The applicant contends that any confusion arising during his interview regarding the dates of his absences was the result of his minimal understanding of English. However, the applicant's claims are directly contradicted by the fact that his son's birth certificate reflects that the applicant was present in Mexico and signed this document on August 3, 1985, the date his son's birth was registered. As has been previously noted, the birth certificates of both the applicant's son and daughter list his domicile as an address in Mexico, rather than an address in the United States. Furthermore, the record shows that the applicant is sufficiently competent in the use of the English language as he passed tests establishing a minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States during his interview on January 8, 2002. Moreover, the applicant's statement and explanation cannot be reconciled with the fact that he specifically admitted he had had been absent from the United States for three months during 1985 at his interview.

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

On appeal, counsel reiterates the applicant's claim to have continuously resided in the United States since prior to January 1, 1982, without addressing the issue of his absences from this country during the requisite period. Neither counsel nor the applicant provides any compelling reason as to why his prior testimony relating to his absences from this country should be disregarded.

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 from this country when departed the United States to return to Mexico for a period of three months in 1985. The applicant has also acknowledged two additional absences from this country from January 1, 1982 to May 4, 1988 for a period of approximately one month on each of these two occasions. 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.