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U.S. Citizenship  
and Immigration  
Services

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FILE:



MSC 03 210 61224

Office: PHOENIX

Date:

DEC 06 2006

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. 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, Chief  
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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant had not established that she resided in the United States in a continuous unlawful status before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act, and also denied the application because the applicant had twice failed examinations meant to establish that the applicant had satisfied the basic citizenship skills requirement described at section 1104(c)(2)(E) of the LIFE Act. This decision was based on the district director's conclusion that the applicant admitted that she had been absent from this country for three months in 1987, and therefore, 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)(i).

On appeal, the applicant asserts that she has enrolled in educational classes and requests another opportunity to demonstrate her basic citizenship skills. In support of her appeal she submits copies of an account summary from Gateway Community College.

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. See § 1104(c)(2)(B) of the LIFE Act and 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 on hundred and eighty days (180) 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 "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 stated 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.

Under section 1104(c)(2)(E)(i) of the LIFE Act, regarding 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 who are developmentally disabled. *See also* 8 C.F.R. § 245a.17(c).

An applicant may establish that he or she has met the requirements of section 312(a) of the Immigration and Nationality Act (Act) by demonstrating an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language and by demonstrating a knowledge and understanding of the fundamentals of the history and of the principles and form of government of the United States. *See* 8 C.F.R. § 245a.17(a)(1) and 8 C.F.R. §§ 312.1 and 312.2.

An applicant may also establish that he or she has met the requirements of section 312(a) of the Act by providing a high school diploma or general educational development diploma (GED) from a school in the United States. *See* 8 C.F.R. § 245a.17(a)(2).

Finally, an applicant may establish that he or she has met the requirements of section 312(a) of the Act by providing evidence that he or she has attended or is attending a state recognized, accredited learning institution in the United States, following a course of study which spans one academic year and that includes 40 hours of instruction in English and United States history and government. The applicant may provide documentation of such on the letterhead stationery of said institution prior to or during the LIFE interview. *See* 8 C.F.R. § 245a.17(a)(3).

The applicant who fails to pass the English literacy and/or the United States history and government tests at the time of the initial LIFE interview shall be afforded a second opportunity after 6 months: to pass the tests; to submit evidence of a high school diploma or GED from a school in the United States; or to submit evidence that he or she has attended or is attending a state-recognized, accredited learning institution in the United States, following a course of study which spans an academic year and that includes 40 hours of instruction in English and United States history and government. *See* 8 C.F.R. § 245a.17(b).

On April 28, 2003, the applicant filed this Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

On December 2, 2003, the applicant was interviewed in connection with her LIFE Act application. She failed to demonstrate a minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States.

On August 24, 2004, the applicant appeared for a second interview and failed to demonstrate a minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States. In addition, the applicant admitted during the interview that she had traveled to Mexico in February 1983 to give birth to her son and was absent from the United States for a period of two months.

On December 10, 2004, the director issued the notice of intent to deny (NOID) in which he indicated that the applicant had failed the basic citizenship skills examination at each of her interviews, and that her absence in 1983 exceeded the 45 day limit, and gave the applicant 30 days to respond with additional evidence.

In a response dated December 20, 2004, the applicant asserted that she had a learning disability and that she was only absent from the United States for 45 days. In support of her assertions she submitted a letter from [REDACTED], ESL Instructor, with Osborn School District No. 8, dated December 15, 2004, which states that the applicant has been attending weekly ESL classes at the Montecito School for the past two years. The applicant also submitted a document from Clinica Latina dated August 5, 2004, which has the statement "Pt demonstrates learning disability compounded by short term memory loss."

On May 18, 2005, the director denied the application based on the reasons set out in the NOID.

On appeal, the applicant states that she has enrolled in courses and requests another opportunity to take the Basic Citizenship Skills test.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In this case the applicant has failed to provide any probative evidence resolving her inconsistent testimony as to the length of her absence in 1983. In response to the director's NOID the applicant stated "I do not have any proof of the time that I left the United States . . . I am positive that I was out less than 45 days." However, this is contradicted by both the testimony provided by the applicant on August 24, 2004, and the testimony provided by the applicant at a July 23, 1993, Temporary Resident interview. On July 6, 1990, the applicant filed a Form I-687, Application for Status as a Temporary Resident. At her interview on July 23, 1993, the applicant testified that she left the United States to give birth to her son in Mexico and was absent from the United States for one year. Thus, the applicant's statements with regard to her absence are inconsistent. An applicant may not make material changes to an application in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). The applicant has not asserted that her delays in returning to the United

States were due to emergent reasons, and she has not submitted any evidence sufficient to rebut her own admissions. In this case the applicant's assertions are not persuasive and the director's decision with regard to establishing continuous unlawful residence since prior to January 1, 1982, will not be disturbed.

The applicant submitted a document purporting to be a doctor's note from [REDACTED] dated August 5, 2004. The document asserts that she has a learning disability compounded by short-term memory loss. The pertinent regulation regarding aliens to be granted an exception to the basic citizenship skills requirement and those circumstances under which the Attorney General could consider a waiver of such requirement is contained at 8 C.F.R. § 245a.17(c) and states the following:

Exceptions. LIFE Legalization applicants are exempt from the requirements listed under paragraph (a)(1) of this section if he or she has qualified for the same exceptions as those listed for naturalization applicants under §§ 312.1(b)(3) and 312.2(b) of this chapter. Further, at the discretion of the Attorney General, the requirements listed under paragraph (a) of this section may be waived if the LIFE Legalization applicant:

- (1) Is 65 years of age or older on the date of filing; or
- (2) Is developmentally disabled as defined under 8 C. F. R. § 245a.1(v).

All persons applying for naturalization and seeking an exception from the requirements of § 312.1(a) and paragraph (a) of this section based on the disability exceptions must submit Form N-648, Medical Certification for Disability Exceptions, to be completed by a medical or osteopathic doctor licensed to practice medicine in the United States or a clinical psychologist licensed to practice psychology in the United States. 8 C.F.R. § 312.2(b). This document alone, without a Form N-648, is not sufficient to establish that the applicant has a disability and is qualified for a waiver of the basic citizenship skills requirement. Thus, the applicant has not established that she is qualified for a disability exception to the "basic citizenship skills" requirement set forth in section 1104(c)(2)(E)(i) of the LIFE Act.

The record verifies that the applicant did not pass the basic citizenship skills examination on May 6, 2004 and on November 19, 2004.

The regulations state that to fulfill the LIFE Act requirements relating to basic citizenship skills an applicant may provide his or her high school diploma or GED from a school in the United States. *See* 8 C.F.R. § 245a.17(a)(2). The applicant has not provided a high school diploma or GED from a school in the United States.

The applicant is not 65 years old or older and is not developmentally disabled. Thus, she does not qualify for either of the exceptions listed in section 1104(c)(2)(E)(ii) of the LIFE Act.

On appeal the applicant submitted Account Summaries from Gateway Community College indicating she has registered for an English as a Second Language (ESL) course. The regulation

states that the curriculum of any program in which an applicant is enrolled must be for at least one academic year and include at least 40 hours of instruction in English and United States history and government. In this case the letter submitted does not state the duration of the classes that the applicant is attending, nor does it detail how the program is commensurate with an academic year of study including 40 hours of instruction in English and United States history and government. In addition the applicant did not provide documentation of such on the letterhead stationary of said institution prior to or during the LIFE interview. *See* 8 C.F.R. § 245a.17(a)(3). For these additional reasons the evidence submitted is not persuasive.

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 AAO will not disturb the director’s decision that the applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

The applicant has not established by a preponderance of the evidence that she arrived in the United States prior to January 1, 1982, and continuously resided here in an unlawful status until May 4, 1988. In addition the applicant has failed to establish that she possesses basic citizenship skills. The appeal will be dismissed.

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