



U.S. Citizenship
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Services

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FILE: [Redacted]
MSC 02 246 60385

Office: DALLAS

Date: MAY 08 2006

IN RE: Applicant: [Redacted]

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. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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

The district director determined that the applicant was in a lawful status as a F-1 nonimmigrant student from August 1980 to August 1983. Accordingly, the district director denied the application because he 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.

On appeal, the applicant asserted that he violated his status by working without authorization from the legacy Immigration and Naturalization Service (legacy INS) from 1981 through 1983. The applicant submits additional documents in support of his appeal.

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).

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 applicant 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 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.

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).

Section 1104(c)(2)(B) of the LIFE Act states:

- (i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

(ii) Nonimmigrants - In the case of an alien who entered the United States as a nonimmigrant before January 1, 1982, such alien must establish that the period of authorized stay as a nonimmigrant expired before such date through the passage of time or that the alien's unlawful status was known to the Government as of such date.

The word "Government" means the United States Government. An alien who claims his or her unlawful status was known to the Government as of January 1, 1982, must establish that prior to January 1, 1982, documents existed in one or more government agencies so, when such documentation is taken as a whole, it would warrant a finding that the alien's status in the United States was unlawful. *Matter of P-*, 19 I&N 823 (Comm. 1988).

Congress provided only two ways in which an applicant who had been admitted as a nonimmigrant could establish eligibility for permanent residence under the LIFE Act. The first was to clearly demonstrate the authorized period of stay expired prior to January 1, 1982. The second was to show that, although the authorized stay had not expired as of January 1, 1982, the applicant was nevertheless in an unlawful status that was known to the government as of that date. In doing so Congress acknowledged it was possible to have an authorized stay and yet still be unlawful due to another reason, such as illegal employment. However, the LIFE Act very clearly states the unlawfulness had to have been known to the government as of January 1, 1982.

The record contains a Form I-687, Application for Status as a Temporary Resident signed and dated by the applicant on July 13, 1990. The applicant, on his application, indicated that he entered the United States with a nonimmigrant F-1 student visa issued on September 3, 1980. The applicant indicated that he had violated his status and provided a list of his employments from 1981 to 1988. As evidence, the applicant submitted photocopies of: 1) a Form 511, Individual Income Tax Return from the state of Oklahoma for 1983; 2) three 1984 wage and tax statements; 3) page one of Form 1040, U.S. Individual Income Tax Return for 1987; and 4) page one of Form 1040, U.S. Individual Income Tax Return for 1988.

The record also contains a copy of the applicant's Nigerian passport and official school transcripts from Phillips University in Enid Oklahoma. The passport revealed that the applicant was issued a F-1 non-immigrant visa on September 3, 1980 valid until September 3, 1981, and a F-1 multiple non-immigrant visa issued on December 30, 1982 valid until December 29, 1986. The applicant lawfully entered the United States on September 13, 1980 and January 9, 1983. The applicant's school transcripts reflected his attendance during the fall semester of 1980; spring, summer and fall semesters of 1981; spring, summer and fall semesters of 1982; and the spring and summer semesters of 1983.

On appeal, the applicant submits photocopies of: 1) Form 1040s for 1981, 1983, 1984, 1986, 1987 and 1988; 2) Form 511s for 1981 and 1982; and 3) documents from the Internal Revenue Services reflecting the applicant's delinquent tax liability for the tax periods ending 1984, 1985 and 1987.

A thorough review of the record fails to support the applicant's claim that he had previously submitted a copy of his "Personal Earnings and Benefit Estimate Statement from the Social Security Administration."

The record contains no evidence demonstrating that the applicant was authorized to accept employment as a F-1 student. The applicant fails to provide any evidence, such as a Social Security Administration earnings statement or documentation from the Internal Revenue Service that would warrant a finding that his alleged unlawful status in the United States was known to the government as of January 1, 1982 pursuant to *Matter of P, supra*. The 1981 and 1983 income tax returns have no evidentiary weight or probative value as they were not

certified as being filed. Thus, the AAO cannot conclude that the applicant was in an unlawful status which was known to the government as of January 1, 1982, as a result of unauthorized employment.

The statements of the applicant on appeal have been considered. Nevertheless, in this case the applicant has failed to establish that his authorized stay expired prior to January 1, 1982, and that he was otherwise in an unlawful status that was known to the government as of January 1, 1982. The applicant has, therefore, failed to establish that he resided in continuous unlawful status in the United States from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act.

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). The applicant has failed to meet this burden. Accordingly, the applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

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