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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20536



U.S. Citizenship
and Immigration
Services

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FILE:

MSC 02 054 63330

Office: DALLAS

Date:

NOV 03 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:



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 Act (LIFE) Act was denied by the District Director, Dallas, Texas, and is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant had not established that he 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. This decision was based on the district director's conclusion that the applicant admitted that he had been absent from this country for 180 days 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, counsel asserts the applicant's returns to this country after his absences from the United States were due to emergent reasons. In support of these assertions counsel submitted four letters.

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.

(Emphasis added.)

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 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.

In this case the record contains numerous inconsistencies regarding the date, duration and nature of the applicant's departures from the United States. 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 (the Act). 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 indicated that he had been absent from June 1987 to January, 1988 "for medical reasons," from May, 1983 to June, 1983 for a family visit, and from August, 1981 to September, 1981 for a family visit. A form for determining class membership in *CSS v. Meese or LULAC*, signed August 2, 1993, indicates that the applicant's last absence was from June 25, 1987 to January 15, 1988. The applicant also signed an affidavit on October 4, 1990, stating that he was injured on the job and returned to Mexico for treatment in June of 1987. In a Memorandum of a Record of Interview, dated November 7, 1994, the applicant asserts that he departed the United States twice, once in May of 1982 to see his family, and again in June 1987 to see his grandmother.

The applicant subsequently filed his Form I-485 LIFE Act application on November 23, 2001. On November 7, 2003, the applicant signed a sworn statement that he had been absent from June 1987 to January of 1988. On December 4, 2003, the director sent the applicant a Notice of Intent to Deny (NOID) explaining that the applicant's absence precluded his eligibility to adjust status under the LIFE Act, and giving the applicant 30 days to provide further evidence that might establish eligibility. The applicant provided a written explanation but did not submit any further evidence which would have established eligibility.

In response to the NOID and on appeal, counsel acknowledges the applicant's absence from June of 1987 to January of 1988, but asserts that his return to the United States had been delayed by emergent reasons. Although this term is not defined by regulation, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988) holds that emergent means "coming unexpectedly into being."

On appeal the following documents were submitted to support the assertion that the applicant's delayed return was due to emergent reasons:

1. A March 17, 2004, letter from Dr. [REDACTED] stating that the applicant's family is under his care and that [REDACTED] grandmother of the applicant, has a condition.
2. A February 27, 2004 letter from Dr. [REDACTED] stating that the applicant's grandmother is 96 years old, has a medical condition which requires attention 24 hours a day, and that the applicant assumed responsibility for her care when her husband died.
3. A March 17, 2004 letter from [REDACTED] stating that she is the applicant's mother and that her mother was sick in 1987 and that the applicant was the only moral and economic support available to them.

4. A February 25, 2004 letter from [REDACTED] stating that the applicant is her grandson, that he traveled to Mexico during the time in question, and that the applicant is the only source of moral and economic support for the family.

Based on the documentation submitted the applicant's return to the United States was not delayed by emergent reasons. The applicant has asserted that he traveled to Mexico to be with his sick grandmother, and it was thus foreseeable that the applicant might have been delayed to make arrangements to care for his grandmother.

The applicant has failed to submit sufficient, probative evidence to establish that emergent reasons delayed his return to the United States in 1988. Consequently, the applicant cannot be considered to have continuously resided in the United States for the requisite period pursuant to 8 C.F.R. § 245a.11(b), because his absences of approximately 180 days exceeds the forty five day limit for a single absence. The applicant has failed to establish having resided in continuous unlawful status in the United States 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.