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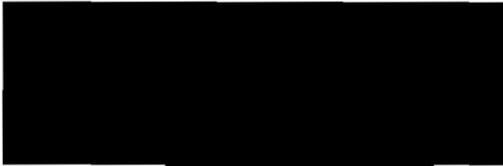
U.S. Department of Homeland Security
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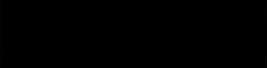
U.S. Citizenship
and Immigration
Services

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FILE:



Office: DALLAS

Date: SEP 05 2006

MSC 02 143 64617

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

The director denied the application because the applicant had failed to establish that he satisfied the “basic citizenship skills” required under section 1104(c)(2)(E) of the LIFE Act. The director also denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, the applicant asserts that he has been residing in the United States since 1979, and provides additional evidence along with copies of previously submitted evidence in support of his appeal.

It is noted that the director, in denying the application, did not set forth the specific reasons for the denial pursuant to 8 C.F.R. § 103.3(a)(1)(i). As such, the documentation submitted throughout the application process will be considered on appeal.

Under section 1104(c)(2)(E)(i) of the LIFE Act (“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 developmentally disabled.

The applicant, who was 45 years old at the time he took the basic citizenship skills test and provided no evidence to establish that he was developmentally disabled, does not qualify for either of the exceptions in section 1104(c)(2)(E)(ii) of the LIFE Act. Further the applicant does not satisfy the “basic citizenship skills” requirement of section 1104(c)(2)(E)(i)(I) of the LIFE Act because he does not meet the requirements of section 312(a) of the Immigration and Nationality Act (the Act). An applicant can demonstrate that he or she meets the requirements of section 312(a) of the Act by “[s]peaking and understanding English during the course of the interview for permanent resident status” and answering questions based on the subject matter of approved citizenship training materials, or “[b]y passing a standardized section 312 test . . . by the Legalization Assistance Board with the Educational Testing Service (ETS) or the California State Department of Education with the Comprehensive Adult Student Assessment System (CASAS).” 8 C.F.R. §§ 245a.3(b)(4)(iii)(A)(1) and (2).

The regulation at 8 C.F.R. § 245a.17(b) provides that an applicant who fails to pass the English literacy and/or the United States history and government tests at the time of the interview, shall be afforded a second opportunity after 6 months (or earlier at the request of the applicant) to pass the tests or submit evidence as described in paragraphs (a)(2) or (a)(3) of this section.

The record reflects that the applicant was interviewed twice in connection with his LIFE application, on May 28, 2003, and again on February 11, 2004. On the both occasions, the director determined that the applicant failed to demonstrate a minimal understanding of English and minimal knowledge of United States history and

government.¹ The applicant has not provided evidence of having passed a standardized citizenship test, as permitted by 8 C.F.R. § 312.3(a)(1).

The applicant, however, could have met the basic citizenship skills requirement under section 1104(c)(2)(E)(i)(II) of the LIFE Act by showing, pursuant to 8 C.F.R. § 245a.17(a), that he:

- (2) has a high school diploma or general educational development diploma (GED) from a school in the United States; or
- (3) has attended, or is attending, a state recognized, accredited learning institution in the United States, and that institution certifies such attendance.

The record does not reflect that the applicant has a high school diploma or a GED from a United States school, and therefore does not satisfy the regulatory requirement of 8 C.F.R. § 245a.17(a)(2).

Along with the applicant's Form I-687 application, the applicant presented a grade card dated June 11, 1982 from the Montebello Unified School District, which indicated that the applicant attended the Montebello Adult School and received an "A" in English as a Second Language level II.

In response to a Notice of Intent to Deny issued on February 10, 2004, and on appeal, the applicant submits documentation from North Hollywood-Polytechnic Community Adult School, which reflects the applicant's enrollment at the school on September 14, 1995. The documentation also reflects the applicant's enrollment in English as a Second Language (ESL) Intermediate Low and High courses on September 3, 2002 and February 3, 2003, respectively along with an Achievement Award dated January 30, 2003 for the applicant's ESL Intermediate Low course.

The documentation from Montebello Unified School District and North Hollywood-Polytechnic Community Adult School does not provide any confirmation that it has a course content that includes any instruction on United States history and government as required by 8 C.F.R. § 245a.17(a)(3). Furthermore, 8 C.F.R. § 245a.17(a)(3) requires that the applicant submit certification on letterhead stationery from a state recognized, accredited learning institution either at the time of filing the Form I-485, subsequent to filing the application but prior to the interview, or at the time of the interview. In the instant case, the documentation from North Hollywood-Polytechnic Community Adult School should have been submitted to Citizenship and Immigration Services prior to or at the time of the applicant's second interview on February 11, 2004. The applicant failed to meet these requirement as the documentation from North Hollywood-Polytechnic Community Adult School was presented *subsequent to* the applicant's interview, and neither organization provided any confirmation that it has a course content that includes any instruction on United States history and government as required by 8 C.F.R. § 245a.17(a)(3).

As previously discussed, the applicant failed to meet the "basic citizenship skills" requirement of section 1104(c)(2)(E)(i)(I) of the LIFE Act because at his two interviews he did not demonstrate a minimal knowledge of United States history and government.

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 applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

¹ The director erred in her decision as the record contains the applicant's examination taken on February 11, 2004, which reflects that he passed the reading and writing portion of the test, but failed the history/civics test.

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. 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).

The applicant has submitted sufficient evidence to establish he resided in the United States since before January 1, 1982 through June 7, 1984. However, the submitted evidence to establish his residence from subsequent to June 7, 1984 through May 4, 1988 is not relevant, probative, and credible. In an attempt to establish continuous unlawful residence for the period in question, the applicant provided the following evidence:

- An affidavit notarized October 7, 1992 from [REDACTED] of West Covina, California, who attested to the applicant's residence in Bell Gardens since June 1980. Mr. [REDACTED] indicated that the applicant was his tenant at both residences in Bell Gardens.
- A letter dated October 24, 2001 from [REDACTED] of Van Nuys, California, who attested to the applicant's presence in the United States since 1979. Mr. [REDACTED] asserted that the applicant attended his sister's wedding in 1985; in 1986, the applicant was invited to his anniversary party; in 1987, he repaired the applicant's automobile; and in 1988, the applicant was present at his niece's baptism.
- A letter dated January 23, 2002 from [REDACTED] pastor at Church of the Resurrection in Los Angeles, California, who indicated that the applicant "had lived in our parish at [REDACTED] Los Angeles, CA 90023, from 1979 until 1989."

- An affidavit notarized February 27, 2004 from [REDACTED] of Sun Valley, California, who indicated that she has known the applicant since March 1985.
- An affidavit notarized March 1, 2004 from [REDACTED] of Sun Valley, California, who indicated that he has been acquainted with the applicant since 1985.

The AAO does not view these documents discussed above as substantive enough to support a finding that the applicant continuously resided in the United States during the period in question. The letter from [REDACTED] has little evidentiary weight or probative value as it does not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v) and contradicts the applicant's claim to have resided in Bell Gardens on his Form I-687 application. Most importantly, the Reverend does not explain the origin of the information to which he attests. Mr. [REDACTED] claims to have known the applicant since 1979, but provides no address for the applicant. As such, his meetings with the applicant in 1985, 1986, 1987 and 1988 can only serve to establish the applicant's presence in the United States on those specific dates. Mr. [REDACTED] asserts that he is the landlord for the residences in Bell Gardens, but fails to provide the addresses where the applicant claimed to have resided during the requisite period. Ms. [REDACTED] and Mr. [REDACTED] assert that they have known the applicant since 1985, but provide no details as to how and where they met, the nature of their interaction in subsequent years or the applicant's actual address. The applicant claimed on his Form I-687 application employment with Olsten Temporary Services from July 1985 through February 1991, but provides no evidence to corroborate this claim.

In addition, the applicant submitted inconsistent information for which no explanation has been provided. Specifically:

1. The applicant claimed on his Form I-687 application employment with [REDACTED] from September 1982 to June 1985. However, in a letter dated August 17, 1992, a representative of [REDACTED] attested to the applicant's employment from January 31, 1980 through February 20, 1983. In addition, in a letter dated February 26, 2004, the vice president of [REDACTED] attested to the applicant's employment as a full-time delivery driver during 1981 and 1982.
2. The applicant claimed on his Form G-325, Biographic Information that he was married in Mexico on October 24, 1983; however, the applicant failed to disclose this absence on his Form I-687 application.

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).

Given the credibility issues arising from the documentation provided by the applicant, it is determined that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he resided in this country in an unlawful status continuously from June 8, 1984 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant is 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.