



U.S. Citizenship  
and Immigration  
Services

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APR 13 2007

FILE:



Office: Los Angeles

Date:

MSC 02 239 63742

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. 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, 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 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 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 admitted that he had been absent from this country from May 12, 1987 to December 11, 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 reiterates the applicant's claim of continuous residence in this country for the requisite period. Counsel asserts that the applicant's absence was longer than forty-five days as a result of his mother's illness. Counsel also requests a "reasonable" number of days to submit a brief and/or additional evidence in support of the applicant's appeal. However, as of the date of this decision, neither counsel nor the applicant has submitted a statement, brief, or additional evidence to supplement the appeal.

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 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).

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.

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).

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to 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. Here, the applicant has acknowledged that he broke his continuous residence in this country for the requisite period by admitting that he had been absent from this country for 213 days from May 12, 1987 to December 11, 1987.

The applicant made a claim to class membership 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 (Act) on August 1, 1991. 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 an absence from this country from May 1987 to December 1987 when he traveled to India "to see parents." The applicant included a "Form for Determination of Class Membership in *CSS v. Meese*" in which he indicated that he departed the United States by airplane on May 12, 1987 to travel to India "to see parents" and then returned to this country when he reentered the United States without inspection on December 11, 1987.

The record shows that the applicant subsequently filed his Form I-485 LIFE Act application on May 27, 2002. The record reflects that the applicant was subsequently interviewed at Citizenship and Immigration Services' or CIS's (formerly the Immigration and Naturalization Service or the Service) Los Angeles, California District Office regarding his Form I-485 LIFE Act application on May 12, 2004. The record contains a sworn statement that is signed by the applicant and written in his own hand in his native language of Punjabi in which he stated that he went back to India in 1987 because his mother was sick and that he stayed in India for five months. The record contains a certified English translation of the applicant's sworn statement that was provided by an individual whom the applicant had authorized to act as his interpreter during his interview. However, the applicant failed to provide any evidence, such as medical records, to corroborate the claim that he returned to India from May 12, 1987 to December 11, 1987 because of his mother's illness.

Based upon the applicant's own testimony on the Form I-687 application, the "Form for Determination of Class Membership in *CSS v. Meese*," and the sworn statement he provided at his interview on May 12, 2004 it must be concluded that his admitted absence from the United States from March 12, 1987 to December 11, 1987 constituted 213 days, 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). 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 prolonged absence exceeded the forty-five day limit for a single absence.

On appeal, counsel acknowledges the applicant's absence from this country from May 12, 1987 to December 11, 1987, but asserts that his return to the United States had been delayed by an emergent reason, specifically his mother's illness. While not dealt with in the district director's decision, there must, nevertheless, be a further determination as to whether the applicant's prolonged absence from the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988) holds that emergent means "coming unexpectedly into being."

Counsel contends that the illness of the applicant's mother was the emergent reason that caused applicant's absence to exceed the forty-five (45) day limit for a single absence from the United States during the period in question, as set forth in 8 C.F.R. § 245a.15(c)(1)(i). However, the record contain no evidence to support the applicant's claim that the reason he returned to India from May 12, 1987 to December 11, 1987 because his mother was ill. Further, the credibility of the applicant's claim that the reason for this trip was his mother's illness is diminished because he initially testified that purpose of his trip to India on these dates was "to see parents" on both the Form I-687 application and the "Form for Determination of Class Membership in CSS v. Meese." Without any direct and independent evidence to the contrary, it cannot be concluded that applicant's absence from the United States of 213 days from May 12, 1987 to December 11, 1987 was due to an "emergent reason" within the meaning of *Matter of C*, *supra*. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The applicant has specifically admitted that he exceeded the forty-five day limit for a single absence from this country when he departed to India on May 12, 1987, and did not return to the United States until December 28, 1987. The applicant has failed to credibly document that an emergent reason delayed his return to the United States. 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.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center [or other office] does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a de novo basis).

An applicant for permanent resident status must establish continuous physical presence in the United States in the period beginning on November 6, 1986 and ending on May 4, 1988. See 8 C.F.R. § 245a.11(c).

The regulation at 8 C.F.R. § 245a.16(b) reads as follows:

For purposes of this section, an alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences from the United States. Also, brief, casual, and innocent absences from the United States are not limited to absences with advance parole. Brief, casual, and innocent absence(s) as used in this paragraph means temporary, occasional trips abroad as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.

The applicant has admitted that he was absent from the United States for 213 days when he traveled to India from March 12, 1987 to December 11, 1987 in testimony on the Form I-687 application, the "Form for Determination of Class Membership in CSS v. Meese," and the sworn statement he provided at his interview on May 12, 2004. An absence of 213 days cannot be considered to be brief. In addition, the applicant acknowledged that reentered the United States without inspection when he returned to the country on December 11, 1987 on the "Form for Determination of Class Membership in CSS v. Meese." The applicant's manner of reentry to the United States on this date was unlawful and contrary to the policies reflected in the immigration laws of this country and cannot be considered as innocent. As such, it cannot be concluded that the purpose of the applicant's absence in that period from November 6, 1986 to May 4, 1988 was either brief or innocent within the meaning of 8 C.F.R. § 245a.16(b).

Thus, the applicant failed to establish that he was continuously physical present in the United States in the period beginning on November 6, 1986 and ending on May 4, 1988 as required by 8 C.F.R. § 245a.11(c), and, therefore, is ineligible to adjust permanent resident status under the provisions of the LIFE Act on this basis as well.

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