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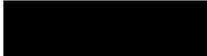
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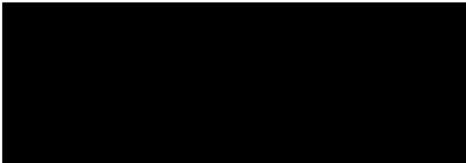
Applicant:



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

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

On appeal, counsel asserts that the applicant did not fail the language and civics examination. Counsel claims that the applicant was nervous at the time and if the applicant had been given more time, he believes he would have passed the examination.

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 44 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 July 15, 2003, and again on February 12, 2004. On the both occasions, the applicant failed to demonstrate a minimal understanding of English and minimal knowledge of United States history and government.

Furthermore, 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.

On July 15, 2003, the applicant was issued a Form I-72, which requested that he provide evidence of attending a one year course of study at a state recognized, accredited institution or evidence that earned a high school diploma or a GED from a United States school. The applicant was granted 12 weeks in which to submit the requested document. The applicant, however, failed to respond to the notice. Accordingly, the record does not reflect that the applicant has a high school diploma or a GED from a United States school, or is attending, a state recognized, accredited learning institution in the United States and, therefore, he does not satisfy the regulatory requirement of 8 C.F.R. §§ 245a.17(a)(2) or (3).

In a Notice of Intent to Deny issued on May 19, 2004, the applicant was advised of his failure to demonstrate basic citizenship skills. The applicant was granted 30 days in which to submit a rebuttal. The applicant's however, failed to respond to the Notice.

On appeal, counsel asserts, "if he [the applicant] did not pass, it is because he believed the officer did not give him the time necessary for him to adequately consider all the questions." Counsel asserts that the applicant should be allowed an opportunity to demonstrate he has the knowledge to pass the language and civics exam.

Counsel's assertion has not merit as the record reflects that the applicant wrote in his native language that he could not understand or read English. Finally, counsel cites no statute or regulation that compels the director to schedule the applicant for third interview. The regulation only provides *one* opportunity after the failure of the first test. 8 C.F.R. § 245a.17(b).

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 understanding of the English language and 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.

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).

Here, the submitted evidence is not relevant, probative, and credible. In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following:

- A letter notarized April 26, 1994 from [REDACTED] of Las Cruces, New Mexico, who indicated that the applicant was in her employ from December 1981 to December 1982.
- An additional letter dated February 1, 1995 from [REDACTED] owner of [REDACTED] in Las Cruces, New Mexico, who indicated that the applicant was in her employ at Nellie's Café from 1981 through 1982.
- A notarized affidavit from an aunt [REDACTED] of Mesquite, New Mexico, who attested to the applicant's residence in Mesquite, New Mexico since 1982. The affiant asserted that she resided with the applicant.
- A notarized affidavit from [REDACTED] of Anthony, New Mexico, who attested to the applicant's presence in the United States since 1982.
- A notarized affidavit from [REDACTED] of Vado, New Mexico, who attested to the applicant's residence in Mesquite, New Mexico since 1982 and to his departure from the United States in June 1987.
- A notarized affidavit from [REDACTED] of New Mexico, who attested to the applicant's residence in Mesquite, New Mexico since 1982.
- A notarized affidavit from [REDACTED] of New Mexico, who attested to the applicant's residence in Mesquite, New Mexico since 1982.
- Wage and tax statements for 1983, 1984, 1985 and 1987 from [REDACTED]

- A letter dated April 5, 1994, from [REDACTED] of BJZ Dairy in Mesquite, New Mexico, who indicated that the applicant has been in his employ as a full-time milker from 1983 to 1988.
- An additional notarized letter dated February 3, 1998 from [REDACTED] who reaffirmed the applicant's employment since 1983 and indicated that the applicant resides in company housing and pays no utilities.
- A 1983 wage and tax statement from Buena Vista Dairy in Mesquite, New Mexico
- Kmart receipts dated May 31, 1983 and September 19, 1983.
- His eldest daughter's school transcript and a letter dated February 29, 1988 from the principal of Mesquite Elementary School in New Mexico, reflecting the daughter's attendance since March 16, 1983. It is noted that the transcript listed the daughter's date of residence as December 9, 1982.
- His eldest daughter's immunization records reflecting vaccinations given during 1983.
- His youngest daughter's school transcript which listed attendance from March 16, 1983 through October 19, 1987. It is noted that the transcript listed the daughter's date of residence as December 9, 1982.
- A notarized affidavit from [REDACTED] and [REDACTED], relatives of the applicant's spouse, who indicated from 1981 to 1983, the applicant and his family "resided with one or another of the persons making this affidavit."
- A notarized affidavit from [REDACTED] of Mesquite, New Mexico, who indicated that he has been acquainted with the applicant since December 1981. The affiant asserted that he met the applicant while he was residing at [REDACTED]'s home and could attest to the applicant's continuous residence in the United States "since than I have seen them often enough."
- A notarized affidavit from [REDACTED] of Mesquite, New Mexico, who indicated that he met the applicant during the holidays in December 1981 "when I need some assistance and they were recommended to do housework both inside and out." The affiant indicated that she could attest to his continuous residence in the United States "since than I have seen them often enough."
- A notarized affidavit from a relative, [REDACTED] of Mesquite, New Mexico, who indicated that she has been acquainted with the applicant since December 1981. The affiant indicated she could attest to his continuous residence in the United States "because they have stayed with one or another of my husband's relative [sic]."

On July 15, 2003, the applicant was issued a Form I-72, which requested he provide evidence that he entered the United States prior to January 1, 1982 and resided continuously since before January 1, 1982 through May 4, 1988. The applicant was granted 12 weeks in which to submit the requested document. The applicant, however, failed to respond to the notice.

In the Notice of Intent to Deny issued on May 19, 2004, the applicant was advised that he had failed to provide convincing evidence to substantiate his claim to have resided in the United States during the requisite period. The applicant also failed to respond to this notice. On appeal, counsel asserts the applicant has submitted sufficient documentation establishing continuous residence in the United States during the period in question.

The applicant has submitted sufficient evidence to establish his continuous unlawful residence in the United States from December 9, 1982 through May 4, 1988. The AAO, however, does not view some of the documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982 and resided since such date through December 8, 1982. [REDACTED] and [REDACTED] all attested to the applicant's residence since "1982,"

but failed to provide an address where the applicant resided during the period in question and any details regarding the nature or origin of their relationships with the applicant or the basis for their continuing awareness of the applicant's residence. The affidavits from the applicant's relatives also failed to provide an address where the applicant resided and must be viewed as having self-evident interests in the outcome of proceedings, rather than as independent, objective and disinterested third parties. Furthermore, the applicant did not list any residence in the United States on his Form I-687 application dated February 29, 1994 until 1982. In addition, [REDACTED] indicated that the applicant was in her employ from December 1981 to December 1982. The applicant, however, indicated on his Form I-687 application to be employed at Nellie's Café commencing in 1982. These contradictions seriously undermine the credibility of the applicant's claim and the authenticity of affiants' affidavits.

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 entered the United States before January 1, 1982 and resided in this country in an unlawful status continuously from before January 1, 1982 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.

Finally, it must be noted that the applicant had previously filed a *timely* Form I-687 application on February 25, 1988, and was given alien registration number [REDACTED]. The application was subsequently denied on October 27, 1988. The applicant's appeal from the denial of his application was dismissed by the AAO on March 24, 1993. All the documentation from the Form I-687 application has been consolidated into LIFE application.

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