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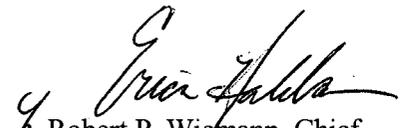
IN RE: Applicant: [REDACTED]

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. If your appeal was sustained, or if your case 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, El Paso, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

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

The applicant failed to establish that he had satisfied "basic citizenship skills" requirement, and did not provide sufficient evidence to demonstrate that he had satisfied one of the alternative means for meeting this requirement. Furthermore, the applicant submitted insufficient evidence to credibly document his continuous residence in an unlawful status and his continuous presence in the United States during the relevant period. Consequently, on November 9, 2004, the district director issued a Notice of Intent to Deny (NOID) the application, and afforded the applicant 30 days in which to overcome or rebut the proposed bases for denial. In a response received on December 3, 2004, the applicant briefly stated the reasons that he believed he was eligible for the benefit sought, but submitted no documentary evidence in support of his claims. The director found that the response was insufficient to satisfy the applicant's burden of proof, and consequently denied the application on December 17, 2004.

On appeal, the applicant submits Form I-290B as well as a one-page document entitled "Appeal Brief" and additional documentary evidence. The applicant again requests reconsideration of the evidence submitted, and submits for the first time on appeal additional documentation pertaining to an educational course at Long Beach City College as well as documentation to demonstrate residence during the relevant period.

The first issue in this matter is whether the applicant has satisfied the "basic citizenship skills" required under section 1104(c)(2)(E) of the LIFE Act. Under this section, 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 requirements for aliens who are at least 65 years of age or developmentally disabled.

The applicant, who was 39 years old at the time he took the basic citizenship skills test and provided no evidence to establish that she 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 (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) states 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) and (a)(3) of this section [8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3)]. The second interview shall be conducted prior to the denial of the application for permanent residence and may be based solely on the failure to pass the basic citizenship skills requirements.

Pursuant to 8 C.F.R. § 245a.17(b), the applicant was afforded two interviews in connection with his LIFE Act application, on February 18, 2004 and again on September 15, 2004. On both occasions, the applicant was unable to demonstrate an understanding of ordinary English. Specifically, the applicant failed both tests during both of his interviews. The applicant did not provide evidence of having passed a standardized citizenship test, as permitted by 8 C.F.R. § 312.3(a)(1).

In the alternative, an applicant can satisfy the basic citizenship skills requirement by demonstrating compliance with section 1104(c)(2)(E)(i)(II) of the LIFE Act, if he or she meets one of the criteria defined in 8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3). In part, an applicant must establish that he or she meets the following under 8 C.F.R. § 245a.17:

- (2) He or she has a high school diploma or general education development diploma (GED) from a school in the United States; or
- (3) He or she has attended, or is attending, a state recognized, accredited learning institution in the United States, and that institution certifies such attendance. The course of study at such learning institution must be for a period of one academic year (or the equivalent thereof according to the standards of the learning institution) and the curriculum must include at least 40 hours of instruction in English and United States history and government.

On November 9, 2004, a notice of intent to deny (NOID) was mailed to the applicant notifying him of the basic citizenship skills requirements. The exceptions to these requirements were clearly stated, and the applicant was afforded an opportunity to respond to the notice with evidence in support of his eligibility. In a response submitted on December 3, 2004, the applicant claimed that he had attended El Paso

Community College and “learned the basic understanding of the English language.” No documentation to support this claim was submitted, and the application was subsequently denied on December 17, 2004.

On appeal, the applicant submits a virtually identical statement to that submitted in response to the NOID. However, on appeal, he claims that he “assisted” Long Beach City College as well as El Paso Community College, and in support of this contention, he provides the following:

1. Letter dated February 2, 1990 from [REDACTED] ESL Specialist at Long Beach City College. The letter, entitled “English as a Second Language Placement Letter,” indicates that the applicant tested on 1/31/90. In addition, it further states, “This is to inform you that you tested at Level 640,” and instructs the applicant to report back on June 4, 1990.
2. Certificate of Satisfactory Pursuit, dated October 8, 1990, by [REDACTED] of Long Beach City College, certifying that the applicant was enrolled in a recognized program.
3. Certificate from El Paso Community College, dated May 18, 1993, indicating that the applicant has completed 100 hours of instruction in General Education Development.

This evidence is not persuasive.

The applicant does not have 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). The applicant also has not demonstrated that he attended, or was attending, a state recognized, accredited learning institution in the United States that provides a course of study for a period of one academic year (or the equivalent thereof according to the standards of the learning institution) with curriculum including at least 40 hours of instruction in English and United States history and government as allowed under 8 C.F.R. § 245a.17(a)(3).

The documentation submitted on appeal is insufficient to establish that the applicant has satisfied the regulatory requirements. The regulation at 8 C.F.R. § 245a.17(a)(3) provides that evidence demonstrating an applicant’s current or prior attendance at a state accredited learning institution should be submitted “either at the time of filing Form I-485, subsequent to filing the application but prior to the interview, or at the time of the interview (the applicant’s name and A-number must appear on any such evidence submitted).” The proper time for submission of this documentation, therefore, has passed. In addition, even if the documentation had been timely filed, there is no evidence to demonstrate that El Paso Community College and Long Beach City College are state recognized, accredited learning institutions in the United States that provide courses of study for a period of one academic year (or the equivalent thereof according to the standards of the learning institutions) with curriculum including at least 40 hours of instruction in English and United States history and government as allowed under 8 C.F.R. § 245a.17(a)(3).

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 AAO will not disturb the director’s

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

The second issue in this matter is whether the applicant has continually resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988.

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).

Although Citizenship and Immigration Services (CIS) 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).

On his Form I-687, Application for Status as a Temporary Resident, which he signed under penalty of perjury on June 22, 1990, the applicant provided his employment and address history dating back to 1981. Specifically, he claimed to live at the following addresses in Long Beach, California, 90813 during the relevant period:

December 15, 1981 to October 30, 1985:
October 30, 1985 to June 26, 1988:



Regarding his employment, the applicant claimed to work for the following entities during the relevant period:

December 25, 1981 to July 16, 1985:
July 16, 1985 to ___ 1985:
___ 1987 to ___ 1988:
February 1988 to May 1990:



The applicant also claims that he departed the United States twice during this period, from August 26, 1987 to September 20, 1987 and from December 4, 1987 to December 17, 1987.

The applicant did not provide any documentary evidence to corroborate these claims. In the NOID, the district director noted that the record did not contain credible and verifiable evidence that the applicant continually resided in the United States since before January 1, 1982 through May 4, 1988, and afforded the applicant the opportunity to submit additional evidence in support of the application.

In response, the applicant submitted a letter dated December 3, 2004, restating the facts set forth on Form I-687. The applicant further claimed that during his twenty-three years in the United States, he has always been employed and filed annual tax returns. He further claimed to currently own an Auto Repair Shop. No documentary evidence to support these claims was submitted.

The director denied the application, noting that there was insufficient evidence to show that the applicant was unlawfully present in the United States from before January 1, 1982, the beginning of the qualifying period,

through May 4, 1988, and noted that despite being afforded the opportunity to present evidence in response to the NOID, the applicant failed to do so.

In his appeal brief, the applicant claims that due to a house fire, he did not possess much evidence to support his presence in the United States during the required period. In support of his eligibility, he submits the following evidence:

1. Letter dated July 3, 1990 from [REDACTED] claiming that the applicant lived with her at [REDACTED] from October 30, 1985 to May 22, 1987. It is noted that the applicant claims to have resided at this address until June 26, 1988.
2. Undated employment verification from [REDACTED], verifying that the applicant worked for him from December 25, 1981 to July 16, 1985 in the capacity of general labor.
3. Letter dated July 3, 1990 from [REDACTED], claiming that the applicant was working with him as a gardener from May 1987 until February 1988.

The applicant also submits several handwritten receipts from the years 1983, 1985 and 1988, as well as copies of Travelers Express Money Orders. Finally, the applicant also submits payroll records, medical records, and a number of receipts subsequent to May 4, 1988. Since these documents fall outside of the relevant period, they bear no weight in these proceedings.

Upon review of the documentation submitted, the AAO concurs with the director's decision.

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 quality of evidence alone but by its quantity." *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 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.

Here, the submitted evidence is not relevant, probative, and credible.

Although the applicant claims he entered the United States in December 1981, he likewise claims that he entered without inspection. As a result, there is no documentary evidence in the form of an arrival-departure record or stamped passport to verify the exact date of entry. The applicant provided a document entitled

"Employment Verification" from [REDACTED], claiming that the applicant began working for him on December 25, 1981.

This statement, as well as the letter from [REDACTED] does not meet the regulatory requirements. Specifically, in lieu of an employment letter, CIS will accept an affidavit form-letter stating that the alien's employment records are unavailable and why they are unavailable, as well as the employer's willingness to come forward and give testimony as requested. See 8 C.F.R. § 245.a2(d)(3)(i)(F). The statements of Mr. [REDACTED] do not state this information. Moreover, neither statement is in affidavit form.

While there is no specific regulation which governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements which affidavits from organizations are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information which an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to. See 8 C.F.R. § 245a.2(d)(3)(v).

While these standards are not to be rigidly applied, an application which is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on affidavits which are considerably lacking in such basic and necessary information. Although a letter from [REDACTED] is provided in support of the claim that the applicant resided with her from October 30, 1985 to May 22, 1987, this letter is also not in affidavit form and does not meet the above criteria, for it fails to specify the basis for her acquaintance with the applicant or the origin of the information to which she attests. Moreover, she claims he lived with her at 1959 [REDACTED] until May 1987, yet the applicant claimed, under penalty of perjury, that he resided at that address until June 1988. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

Finally, the handful of receipts and money orders provided are not sufficient to demonstrate that the applicant has satisfied the regulatory requirements. The applicant stated that he filed annual income tax returns every year; however, he has not submitted any such documents. Nor has he submitted any lease agreements, utility bills, cancelled rent checks, or medical records for the relevant period. As discussed above, the letters from his alleged employers do not satisfy the regulatory requirements.

Given the absence of contemporaneous documentation and the reliance on letters which do not meet basic standards of probative value, it is concluded that the applicant has failed to establish, by a preponderance of evidence, that he continuously resided in the United States in an unlawful status since before January 1,

Page 8

1982 through May 4, 1988. Therefore, 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.