



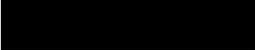
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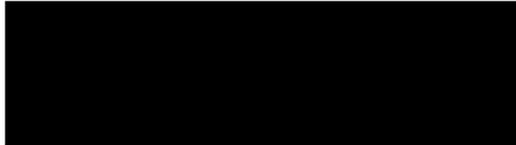
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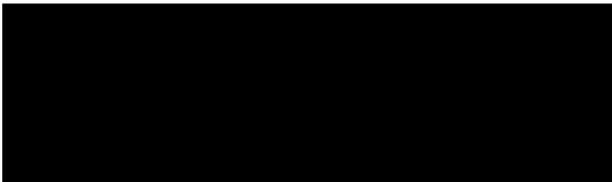
IN RE:

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, Houston, 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 demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988 and that he was physically present in the United States continuously from November 6, 1986 through May 4, 1988. In particular, the director found that the applicant's testimony concerning the duration and cause of an absence from the United States was internally inconsistent and inconsistent with other evidence in the record.

On appeal, counsel asserts that the applicant has adequately explained the inconsistencies observed by the director and submitted sufficient evidence to prove that an emergent reason prevented him from returning to the United States during an absence in 1987 and 1988.

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 through May 4, 1988. 8 C.F.R. § 245a.11(b).

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 exceed 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. 8 C.F.R. § 245a.15(c)(1).

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 evidence throughout the application process:

- An affidavit dated November 20, 1991 from [REDACTED] attesting that he employed the applicant from September 1981 to May 1986.
- An affidavit dated November 20, 1991 from [REDACTED] of Pasadena, Texas attesting that she has known the applicant as an acquaintance since 1983.
- An affidavit dated November 20, 1991 from [REDACTED] of Pasadena, Texas attesting that she has known the applicant as an acquaintance since 1983.
- An affidavit dated November 20, 1991 from [REDACTED] of Pasadena, Texas attesting that he has known the applicant as an acquaintance since 1981.
- An affidavit dated November 20, 1991 from [REDACTED] of Pasadena, Texas attesting that he has known the applicant as an acquaintance since 1981.
- An affidavit dated November 10, 1991 from [REDACTED] residing at [REDACTED] in Pasadena, Texas attesting that the applicant lived with the affiant from May 1981 to November 1987.
- An affidavit dated November 10, 1991 from [REDACTED] residing at [REDACTED] attesting that the applicant lived with the affiant from November 1987 to that date.

On April 23, 2004, the director issued a Notice of Intent to Deny (NOID) stating that at an interview on January 28, 2004, the applicant testified that he departed from the United States to Mexico in October 1987 to see his father who was suffering from stomach cancer, reentering the United States on or around January 27, 1988 after his father died on January 25, 1988. The director observed that on his Form I-687 application, the applicant indicated that this absence lasted from January 1988 to February 1988, and in an interview conducted on December 15, 1993, that this absence lasted from November 1987 through February 1988. In addition, the director observed that on the copy of his father's death certificate the applicant submitted, natural causes rather than cancer are listed as the cause of death.

The director also observed that during the 2004 interview, the applicant testified that he was married on December 15, 1987, which was inconsistent with the date listed on the applicant's Form I-687 application. Finally, the director observed that during the 2004 interview, the applicant testified that he first entered the United States in October 1981, but in the 1993 interview testified that he first entered the United States in August or September 1981.

The director determined that the applicant's absence from the United States from 1987 to 1988 exceeded 45 days and that the applicant had failed to establish that his return to the United States could not be accomplished sooner because of emergent reasons. The director found that because of the doubt cast on the applicant's credibility occasioned by the inconsistencies in the evidence regarding the duration and cause of this absence, the date the applicant was married in Mexico during this absence, and the date the applicant first entered the United States, the applicant had failed to demonstrate that he had resided continuously in the United States from before January 1, 1982 through May 4, 1988 and maintained continuous physical presence in the United States from November 6, 1986 through May 4, 1988.

In response to the NOID, counsel asserted that the applicant's testimony at his interview was sufficient to demonstrate that his absence was brief, casual and innocent, and to show the existence of an emergent reason that prevented the applicant from returning to the United States. Counsel submitted a letter dated May 14, 2004 from [REDACTED] of the city of San Luis Potosi in Mexico attesting that the applicant's father died from prostate cancer in 1988.

In the decision to deny the application dated July 30, 2004, the director stated that "the information received does not provide sufficient evidence to rebut the [NOID]" and denied the application based on the findings in the NOID.

On appeal, counsel reiterates that the applicant has demonstrated that an emergent reason prevented his earlier return to the United States. Counsel also submits an affidavit from the applicant in which the applicant explains that he was mistaken when he testified at his interview that married on December 15, 1987, a mistake that he attributes to the fact that he had both a civil and religious marriage ceremony, the former on November 15, 1987 and the latter on December 26, 1987.

The AAO notes that the applicant does not dispute that he was absent from the United States for more than 45 days, and by his most recent testimony indicates that he was absent from the United States from the last days of October 1987 to approximately January 28, 1988, a period of approximately 90 days. The issue raised on appeal by the applicant is whether the applicant's absence was brief, casual and innocent, for which the applicant offers proof that he was prevented from returning to the United States within 45 days of his departure by the emergent reason of his father's illness and death.

After reviewing all the evidence in the record, the AAO concurs with the director that the evidence submitted by the applicant concerning his absence from the United States, and the reason for his applicant's delay in returning to the United States, is not credible.

As observed by the director, the applicant has presented inconsistent evidence concerning the duration of and reason for this absence. The director noted that the applicant has, at different times during the application process, presented three separate accounts of the period during which he was absent from the United States in 1987 and 1988. Likewise, although the applicant has submitted a letter from a Mexican doctor attesting that the applicant's father died of prostate cancer, the applicant has failed to provide an explanation as to why his father's death certificate, on which the applicant is listed as a witness, states that the applicant's father died of natural causes. Furthermore, on his Form I-687 application, the applicant stated that he left the United States in January 1988 to "see my father's grave" rather than to visit his ill father as otherwise indicated, an inconsistency that raises doubts as to whether the applicant left the United States prior to or after his father's death.

Although the applicant now concedes that he was absent from the United States for more than 45 days, he has failed to offer independent objective evidence showing the exact period of his absence and has not provided an explanation for why he has presented inconsistent information concerning the period of this absence in the past. Neither [REDACTED] nor [REDACTED], who attest to the applicant's place of residence during the requisite period of from before January 1, 1982 through May 4, 1988, nor the other acquaintances whose affidavits the applicant has submitted, indicate that the applicant was absent from the United States during that period. Furthermore, the record contains no evidence of the applicant's employment after May 1986 from which the period of absence can be inferred.

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).

The applicant has submitted inconsistent evidence. It is reasonable to expect the applicant to provide explanations and submit objective evidence that resolves the inconsistencies in the evidence he himself has submitted. It is not sufficient for the applicant simply to indicate that the truth is to be found in his most recent testimony. Furthermore, although the applicant did submit independent evidence to support his testimony concerning the cause of his father's death, this evidence is not sufficient to rebut the contradictory information found in his father's death certificate, an official government document.

The AAO also notes for the record that, according to documents from the Harris County Criminal Court, the applicant pled guilty on February 6, 2004 of misdemeanor assault of a family member and was sentenced to 10 days in jail.

The regulation at 8 C.F.R. § 245a.12(e) provides that "[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods." Preponderance of the evidence is defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5th ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

Given the contradictory nature and of the applicant's evidence concerning an absence from the United States, the AAO determines 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 since that time through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b).

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