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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: PHOENIX Date: JAN 10 2007
MSC 02 257 62287

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:
[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has 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 Act (LIFE) Act was denied by the District Director, Phoenix, Arizona, and is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application, finding 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 determination that the applicant had exceeded the 45-day limit for single absences and the 180-day aggregate day limit for absences from the United States during this period, as set forth in the regulations at 8 C.F.R. § 245a.15(c)(1). The director further denied the application, finding that the applicant failed to demonstrate a minimal knowledge of ordinary English and a knowledge and understanding of the history and government of the United States, as required by Section 1104(c)(2)(E) of the LIFE Act.

On appeal, counsel asserts that the director failed to adequately consider the emergent reasons for the applicant's absences from the United States. On the Notice of Appeal, counsel for the applicant indicated that he would submit a brief and/or additional evidence to the AAO within 30 days of filing the appeal. More than 19 months have lapsed and nothing more has been submitted.

To be eligible for adjustment to permanent resident status under the LIFE Act, the applicant must establish his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act reads as follows:

In general – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act that were most recently in effect before the date of the enactment of this Act shall apply.

"Continuous unlawful residence" is defined at 8 C.F.R. § 245a.15(c), in part:

An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded fortyfive (45) days, and the aggregate of all absences has not exceeded on hundred and eighty days (180) 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.

Under section 1104(c)(2)(E)(i) of the LIFE Act ("Basic Citizenship Skills"), an applicant for permanent resident status must also 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

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.

* * *

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. The “citizenship skills” requirement of section 1104(c)(2)(E)(i)(II) is defined by 8 C.F.R. §§ 245a.17(a)(2) and (3).

Under 8 C.F.R. § 245a.17, LIFE Legalization applicants must establish that:

* * *

(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. . .

Both 8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3) specify that applicants must submit evidence to show compliance with the basic citizenship skills requirement “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 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 [8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3)] (a)(2) and (a)(3) of this section. 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.

The first issue in this matter is whether the applicant established continuous unlawful residence in the United States as required by section 1104(c)(2)(B) of the LIFE Act.

The director issued a Notice of Intent to Deny (NOID) on September 8, 2004, listing reasons why the application would be denied and gave the applicant thirty days to respond. The applicant failed to submit any additional evidence establishing that the applicant met the continuous unlawful

residence requirement of § 1104(c)(2)(B) of the LIFE Act. On November 2, 2004 the application was denied.

On appeal, counsel for petitioner asserts that the applicant's delayed return was due to emergent reasons. Specifically, the applicant asserts that his wife's "testimony about her medical condition" and fearing for her life, as well as the birth of his daughter with diabetes, qualify as an emergent reason for the applicant's delayed return to the United States.

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 or 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

Because the applicant is a class member in a legalization class-action lawsuit, he was permitted to file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (the Act). 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 indicated that he had been absent from September 1987 to December 1987 for a "family emergency."

The applicant subsequently filed his Form I-485 LIFE Act application on June 14, 2002. The record shows that the applicant appeared for an interview at the district office in Phoenix, Arizona on April 22, 2003. The interview was conducted in Spanish. The applicant originally asserted that he went to Mexico from October 1987 through December 1987 to be with his wife during her pregnancy, and again in November 1988. However, the applicant presented a birth certificate for his daughter revealing that the daughter was born on October 28, 1987. The notes of the interviewing officer reveal that the applicant then admitted under oath that he departed the United States in October of 1987 and returned in November of 1988; hence, he was absent for 13 months. The admission that the applicant was absent for 13 months, despite conflicting assertions contained in the I-687 and throughout the record casts doubt about the accuracy of the applicant's assertions.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. 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. 582, 591-92 (BIA 1988). In this case the inconsistencies in the applicant's submissions, in addition to the admissions during interview, cast doubt on the credibility of the applicant's assertions and other evidence contained in the record.

The applicant asserted that his long absence from the United States was due to emergent reasons; hence, did not interrupt his continuous unlawful presence. The applicant claimed two reasons for his 13-month absence: (1) thunderstorms threatened to cause his wife to miscarry, and (2) his daughter was born with diabetes.

Although the term "emergent" is not defined by regulation, in *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988) it was defined as "coming unexpectedly into being."

Neither of the applicant's reasons qualify as an emergent reason. It is foreseeable that an individual could experience delays with childbirth. Claiming that "thunderstorms" caused a "fear for the life" of the applicant's wife is not credible in the absence of corroborating evidence establishing that such a fear was reasonable. There is no other documentary evidence in the record that indicates that the revelation of a condition in either the applicant's wife or daughter was not foreseeable or that the applicant's extended presence in Mexico was related to the condition of either his wife or daughter. In fact, the record contains a letter from Dr. [REDACTED] dated July 23, 1990, stating that the daughter's birth was "without complication." The evidence submitted is not credible given the inconsistencies in the applicant's testimony. The applicant's assertions are not supported by the record. 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)).

The applicant admitted that he had been absent from the United States for 13 months during the requisite period. 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 13-month absence exceeds the 45-day limit for a single absence. The aggregate of all his absences exceeds 180 days. 8 C.F.R. § 245A.15(c)(1).

Based on the conflicting information presented throughout the record, in addition to the failure to demonstrate that the applicant's return was delayed by emergent reasons, the applicant has not established that he resided in continuous unlawful status in the United States from prior to January 1, 1982 through May 4, 1988.

The second issue in this matter is whether the applicant has demonstrated a minimal understanding of English, United States history and government.

The record indicates that the applicant was interviewed twice in connection with his LIFE application, first, on April 22, 2003, and again on May 12, 2004. The applicant failed a test administered to demonstrate a sufficient understanding of English, U.S. history and government. The interview was conducted in Spanish and the questions and written English portion of the test cover basic U.S. history and government. As the applicant failed the administered test, he failed to demonstrate a minimal understanding of English and a minimal knowledge of U.S. history and government.

On appeal counsel for the applicant broadly asserts that the interviewing process to determine whether the applicant has a minimal understanding of the English language is flawed and exceeds the bounds of section 1104 of the LIFE Act. However, counsel for applicant provides no evidence to support this assertion, and provides no source of authority that supports such an assertion. The regulation states that the applicant must demonstrate a minimal understanding of English, U.S. history and government. CIS administered a test in order to determine the applicant's proficiency and the applicant failed. Without any authority or evidence to support counsel's assertion, broadly asserting that the interview process is flawed the argument is not sufficient to carry the applicant's burden of demonstrating eligibility.

As previously discussed, the applicant failed to meet the "basic citizenship skills" requirement set forth in section 1104(c)(2)(E)(i)(I) of the LIFE Act. At neither of the two interviews, the first of which was conducted in Spanish, did the applicant demonstrate a minimal understanding of the English language, U.S. history or government.

The applicant has failed to submit sufficient evidence to establish that emergent reasons delayed his return to the United States. The applicant has failed to establish having resided in continuous unlawful status in the United States 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.

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