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U.S. Citizenship
and Immigration
Services

L2

FILE:

MSC 02 047 60958

Office: HOUSTON

Date: JUN 06 2007

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 District Director, Houston, Texas, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The Administrative Appeals Office (AAO) rejected the appeal on January 9, 2007. On March 26, 2007, the AAO reopened the decision on service motion pursuant to 8 C.F.R. § 103.5(a)(5)(ii). 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 since before January 1, 1982 through May 4, 1988, and had exceeded the forty-five day limit for a single absence as set forth in 8 C.F.R. § 245a.15(c)(1).

On appeal, counsel states that the applicant “clarified” the discrepancies in his testimony and that his testimony and supporting documentation should be given credibility. Counsel submits a brief in support of 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. Section 1104(c)(2)(B) of the LIFE Act; 8 C.F.R. § 245a.11(b).

“Continuous unlawful residence” is defined in the regulations at 8 C.F.R. § 245a.15(c)(1), as follows:

Continuous residence. An alien shall be regarded as having resided continuously in the United States if:

- (1) 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. [Emphasis added.]

The director’s determination that the applicant had been absent from the United States for over forty-five days was based on the applicant’s testimony in a sworn, signed statement taken at the time of his interview at the Los Angeles legalization office on September 30, 2003, under oath and in the presence of an officer of the Immigration and Naturalization Service or the Service (now, Citizenship and Immigration Services or CIS). In his sworn statement, the applicant asserted that he departed the United States for Mexico in 1985, where he remained for two months.

In his Notice of Intent to Deny (NOID) dated March 24, 2004, the director noted that the applicant had given various and conflicting statements regarding his absences from the United States during the qualifying period.

- On his Form I-687, Application for Status as a Temporary Resident, which he signed under penalty of perjury on December 28, 1989, the applicant stated that he had left the United States four times since January 1, 1982: from October 3 to October 10, 1985; April 8 to April 17, 1986; March 4, 1987 to March 11, 1987; and December 23 to January 4, 1989.
- In a February 14, 1992 sworn statement, the applicant stated that he first entered the United States in 1981, and that his only absence from the country was a two-month stay in Mexico in 1989.

- In a February 27, 1992 affidavit, the applicant stated that he left the United States for a two-week period in 1989.
- In a September 3, 2003 sworn statement, the applicant stated that he left the United States during the summer of 1985 for two months, during the summer of 1987 for one month, and during the summer of 1988 for 15 days.

In response to the NOID, the applicant submitted a December 27, 2004 affidavit in which he stated that he departed the United States in July 1984 for a period of two weeks, in October 1984 for a period of one week, in 1985 for a period of two weeks, in 1986 for a period of about five days, and in April 1987 for a period of about five days. The applicant stated that he was nervous during his interview and did not understand the questions asked of him. The applicant further stated that his nervousness caused him to mix up dates and provide the interviewing officer with the wrong information. The applicant submitted no evidence to corroborate his absences from the United States. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

On appeal, counsel states that the applicant had been truthful “in his affidavit and under oath before the interviewing officer,” and that the applicant was “very nervous” at the time of his interview, which accounted for the “incorrect information” provided to the interviewing officer. Counsel asserts that the applicant’s affidavit submitted in response to the NOID clarifies the discrepancies regarding his absences. However, we note first that counsel accompanied the applicant to his LIFE Act adjustment interview, and the record does not reflect that he attempted to correct or verify the conflicting information provided by the applicant. Additionally, the applicant’s nervousness at his interview does not explain the inconsistencies in his statements on his Form I-687 application and the 1992 sworn statements. In each instance, the applicant swore under oath that the information that he provided was correct. Another sworn statement attesting to yet different dates of departures does not constitute objective and competent evidence to resolve the inconsistencies. *See id.*

Accordingly, based on his sworn testimony at his interview, the record reflects that the applicant was absent from the United States in excess of forty-five days during the summer of 1985. However, a further determination must be made as to whether the applicant’s prolonged absence from the U.S. 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.”

For each of his absences, the applicant stated that his purpose in leaving the United States was to visit his family in Mexico. The applicant did not allege that any of his absences was delayed due to an “emergent” reason. Accordingly, the applicant’s two-month stay in Mexico during 1985 interrupted his “continuous residence” in the United States. The applicant has, therefore, failed to establish that he resided in the United States in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required by the statute, section 1104(c)(2)(B)(i) of the LIFE Act, and the regulations, 8 C.F.R. § 245a.11(b) and 15(c)(1). Given this, he is ineligible for permanent resident status under section 1104 of the LIFE Act.

The director further determined that the applicant had not established that he entered the United States prior to 1982. The director noted that on his Form G-325A, Biographic Information, which he signed under penalty of perjury on November 13, 2001, the applicant stated that he lived in Mexico until

December 1982. On appeal, counsel asserts that this date was a typographical error and should have been 1981. Counsel points to the date listed in the current residence block, which shows that the applicant lived in Sealy, Texas in Mexico, and that he began living there in December 1882 as evidence that typographical errors occurred in the Form G-325A. Counsel asserts that the applicant's testimony during the interview that he arrived in the United States in September 1981 was accurate.

However, we note that as with his statements regarding his absences, the applicant has given conflicting statements regarding his initial entry into the United States. In his December 28, 1989 affidavit to determine class membership, the applicant stated that he first arrived in the United States in 1977, and did not admit to any absences prior to 1985. In his February 27, 1992 affidavit, the applicant stated that he arrived in the United States on June 3, 1981. In his September 3, 2003 interview, the applicant stated that he arrived in the United States in September 1981. While any of these initial entry dates could potentially qualify the applicant for benefits under the LIFE Act, the inconsistencies in his statements undermine his credibility.

The applicant submitted a December 12, 1989 letter from [REDACTED] indicating that he worked for the company under an assumed name for more than four months beginning on August 3, 1981, and again under the same assumed name from July 7, 1982 to January 15, 1984. According to the letter, the applicant worked under a different assumed name from September 12, 1984 to January 29, 1985, and under his own name from April 28, 1986 to February 26, 1987. The letter, signed by [REDACTED] vice president "F&A," did not indicate the applicant's address during his employment or whether the information was taken from company records as required by 8 C.F.R. § 245a.2(d)(3)(i). The letter also did not indicate the basis of the company's knowledge that the applicant worked under three different names. The applicant submitted no documentation such as pay stubs, Forms W-2, Wage and Tax Statements, or similar documentation to corroborate his employment with [REDACTED].

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 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 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).

The applicant also submitted the following documentation:

1. A December 16, 1988 affidavit from [REDACTED], in which he stated that the applicant had been his tenant at [REDACTED] in Sealy Texas from November 1981 to September 1987.
2. A sworn statement from [REDACTED] in which she stated that she had known the applicant since November 1981. [REDACTED] did not state the circumstances of her acquaintance with the applicant or that the acquaintance was initiated and was maintained in the United States.
3. A December 17, 1989 sworn statement from [REDACTED], in which he stated that he had known the applicant since December 1981. [REDACTED] did not indicate the basis of his knowledge of the applicant or that he knew of the applicant's residency in the United States during the qualifying period.
4. A September 26, 1989 affidavit from [REDACTED], in which he stated that the applicant worked for him from August 1, 1985 to October 30, 1985 as a vegetable harvester and hog feeder. [REDACTED] stated that the applicant was paid \$25 per day for his services, but that there were no payroll records to verify the applicant's employment. [REDACTED] did not indicate the source of his information regarding the applicant's employment.

The applicant submitted no contemporaneous documentation of his presence and residency in the United States during the required period. While the applicant consistently maintains that he arrived in the United States prior to 1982, the inconsistencies in his statements and the lack of credible documentation corroborating his residency in the United States raise questions as to his credibility. Given the absence of any contemporaneous documentation and the lack of credible and verifiable information in his supporting affidavits, it is concluded that the applicant has failed to establish continuous residence in the U.S. for the required period.

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