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U.S. Citizenship
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FILE: [REDACTED]
MSC 02 232 65572

Office: DALLAS

Date: APR 25 2008

IN RE: Applicant: [REDACTED]

PETITION: 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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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

The district director determined 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, and that he maintained continuous physical presence in the United States during the period from November 6, 1986 through May 4, 1988, as required under section 1104(c)(2)(B) and (C) of the LIFE Act.

On appeal, counsel for the applicant submits a brief.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and his continuous physical presence in the United States from November 6, 1986, through May 4, 1998.

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

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 its amenability to verification. *See* 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).

While there is no specific regulation that governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements that affidavits are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information that 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).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

Nevertheless, an affidavit not meeting all the foregoing requirements *may* still merit consideration as "any other relevant document" pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

On March 30, 2004, the applicant was interviewed in connection with his application. In the presence of his attorney of record at that time, the applicant signed a statement under oath that he had left the United States for one year from 1986 until 1987 or 1988. The applicant was subsequently requested to submit evidence showing that his departure was due to emergent reasons. In response, the applicant provided documentation indicating that his spouse had been admitted to a hospital in Mexico for diarrhea and dehydration on December 8, 1986.

In a Notice of Intent to Deny (NOID), dated August 29, 2005, the district director stated that although a hospital admission may be considered emergent, the condition of the applicant's spouse was temporary and that the applicant had failed to provide evidence of an emergent reason why he had not returned to the United States for one year.

In response to the NOID, counsel provided affidavits from the applicant and his spouse stating that the applicant had only been in Mexico due to his spouse's illness for approximately 31 days - from December 8, 1986 until January 8, 1987.

In a decision to deny the application, dated January 13, 2006, the district director found that the affidavits provided were in direct contradiction to the sworn statement made by the applicant at the time of his interview.

On appeal, counsel does not deny the discrepancy in the applicant's sworn statement and his later affidavit submitted in response to the NOID. However, counsel asserts that the discrepancy can be explained in that the applicant was nervous, not sure of the exact dates of his absence, and did not appropriately communicate the exact months he was gone at the time of his interview. Counsel notes that the applicant had previously submitted an employment letter from Mario Fence Company in Garland, Texas, stating that the applicant had been employed from April 1981 through October 1982, and from June 1986 through October 1988. Counsel concludes that the applicant submitted documentation in the form of affidavits from employers and friends, as well as rent receipts, that prove, by a preponderance of the evidence, his unlawful status and continuous residence in the United States during the required time period

The record shows that from the time of filing a Form I-687, Application for Status as a Temporary Resident, in August 1990 through March 16, 1997, when he filed an appeal from the decision to deny that application, the applicant consistently claimed that he had never left the United States since his initial entry in April 1981. The record also shows that the applicant signed a sworn statement at an interview in connection with his Form I-485, Application to Register Permanent Residence or Adjust Status, in which he testified that he had departed the United States in December 1986, and had returned a year later - in 1987 or 1988. The record further shows that on September 7, 1999, while in the Dallas County jail, a Record of Deportable/Inadmissible Alien, was prepared by a Service officer recording the applicant's claimed last date of entry into the United States to have been without inspection in 1988 at Del Rio, Texas.

Other evidence in the record also raises doubts concerning dates regarding the applicant's claimed date of initial entry and absences from the United States. For example, the applicant states on his Form I-485 that three of his children - [REDACTED], and [REDACTED] - were born in Mexico on July 28, 1983, December 17, 1984, and May 1, 1988, respectively, though there is no indication that the applicant left the United States (or that his wife came to the United States) after his claimed initial entry in April 1981 and prior to his claimed brief return to Mexico for one month from December 1986 to January 1987.

It is further noted that on his Form I-687, the applicant claimed to have been employed as a laborer by a yard contractor in Dallas, Texas, from January 1984 to December 1987, and as a vegetable picker by Harvest in Zolfo Springs, Florida, from January 1988 to May 1988. However, he has also submitted a statement from Mario's Fence Co. in Garland, Texas, stating that he had been employed by that company from June 1986 through October 1988.

Doubt cast on any aspect of the applicant's evidence reflects on the reliability of the petitioner's remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92, (BIA 1988).

The AAO finds that the applicant has failed to submit credible evidence of sufficient probative value to overcome doubts raised by his sworn statement and other evidence in the record concerning the date of the applicant's first entry into the United States, his absences from the United States, and his unlawful continuous residence within the United States during the required time period.

The applicant has, therefore, failed to establish that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, and that he maintained continuous physical presence in the United States during the period from November 6, 1986 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act. Given this, he 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.