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FILE: MSC 03 147 61020 Office: LOS ANGELES Date: AUG 26 2008

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: SELF-REPRESENTED

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 (director) in Los Angeles, California. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that she entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal the applicant asserts that the evidence submitted is sufficient to establish that she has resided in the United States continuously in an unlawful status since 1981.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. See section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

“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.” (Emphases added.)

“Continuous physical presence” is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: “An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of *brief, casual, and innocent absences* from the United States.” (Emphasis added.) The regulation further explains that “[b]rief, casual, and innocent absence(s) as used in this paragraph means *temporary, occasional trips abroad* as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.” (Emphasis added.) 8 C.F.R. § 245a.16(b).

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).

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.

The applicant, a native of Mexico who claims to have lived in the United States since January 1981, filed her application for legal permanent resident status under the LIFE Act (Form I-485) on February 24, 2003. As evidence of her residence in the United States during the years 1981 through 1988, the applicant submitted a series of documents which had originally been filed in 1990. They included the following pertinent materials:

- Affidavits from [REDACTED], a resident of Santa Ana, California, dated April 2, 1990, and March 3, 2006, stating that the applicant is her sister, that the applicant resided with her at her house located at [REDACTED] Santa Ana, California, from 1981 to June 1988; that from 1981 to 1983, the applicant was her housekeeper, and from April 1983 to June 1988, the applicant was her babysitter, and that she was paid in cash.
- An affidavit from [REDACTED] dated April 4, 1990, stating that she has known the applicant since January 1981 to the present (4/4/90), that during this period of time, the applicant lived in Orange County, California, that they are close friends and have kept in touch with each other.

In a Notice of Intent to Deny (NOID), dated January 3, 2007, the director, after listing pertinent documentation in the record, indicated that the applicant had not provided sufficient credible evidence to establish that she resided continuously in the United States from before January 1, 1982, through May 4, 1988. The director cited some inconsistencies in the evidence of record which undermined the credibility of the applicant's claim to have resided continuously in the United States during the time period required for LIFE legalization. Specifically, the director cited two sworn statements by the applicant on August 9, 1990 and April 6, 1992, in which she states that her first entry into the United States to live permanently was in July 1988. The director also cited another sworn statement by the applicant on September 21, 1990, in which the applicant stated that she did not apply for benefits under LULAC before May 4, 1988, because she left the United States three times and came back all three times with a passport and valid visa. The director concluded that although the applicant had made prior entries into the United States before July 1988, she did not stay long enough to have maintained the requisite continuous residence in the United States in an unlawful status because each of the entries were made pursuant to a valid non-immigrant visa thus breaking the continuous unlawful status required as one of the conditions to adjust status under LIFE legalization. In addition, the director noted that since the applicant stated under oath that she first entered the United States in July 1988, she is statutorily ineligible for legalization. The applicant was granted 30 days to submit additional evidence.

The applicant failed to respond to the NOID, and on February 12, 2007, the director issued a Notice of Decision denying the application based on the grounds stated in the NOID.

On appeal, the applicant offered some explanations for the evidentiary inconsistencies the director cited in the NOID. The applicant asserted that the director did not properly consider the evidence submitted, and reiterated her eligibility for the claim sought. The applicant did not submit any additional documentation in support of her claim.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that she has not.

The affidavits from [REDACTED], dated April 2, 1990, and March 3, 2006, and from [REDACTED], dated April 4, 1990, have minimal information about the applicant. While they claim to have known the applicant since the early part of 1981, the affiants provide

almost no information about her life in the United States and their interaction with her over the years. The information in the affidavits is not very personal in nature. Nor are the affidavits accompanied by any documentary evidence from the affiants – such as photographs, letters, and the like – of their personal relationship with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

The affidavits are also inconsistent with the applicant's sworn statement, information provided by the applicant at her CSS class determination interview on April 6, 1992, and other evidence in the record regarding her unlawful residence in the United States since before January 1, 1982.

On August 9, 1990, and again on April 6, 1992, the applicant stated under oath at her CSS class determination interview that she arrived in the United States to reside permanently in July 1988. The applicant then contradictorily stated in an affidavit for determination of class membership in League of United American Citizens (LULAC) v. INS, dated April 9, 1990, that she first entered the United States in January 1981. At her LULAC interview on August 9, 1990, the applicant stated under oath that she had made three prior entries into the United States, in 1985 for two months and went back to Mexico, she re-entered in 1986 for one month and went back to Mexico, she re-entered in 1987 for one month vacation and went back to Mexico and re-entered for the last time in 1988 to live. Documents in the file indicate that the applicant entered the United States each time with a valid non-immigrant visa issued to her in Mexico on May 30, 1985. These entries are confirmed by the admission stamps on her passport except for the 1988 entry.

In the NOID, dated January 3, 2007, the director, while acknowledging that the applicant may have entered the United States prior to January 1, 1982, found that the applicant had not resided continuously in the United States in an unlawful status based on the applicant's own statements and admission. The director cited some evidentiary inconsistencies in the record, notified the applicant of the inconsistencies and offered her the opportunity to provide additional documentation to reconcile or clarify the inconsistencies but she failed to do so.

The AAO notes that the applicant's entry dates stated above are inconsistent with information provided on her Form I-687 filed in 1990. On the Form I-687, the applicant listed only one absence from the United States, in June 1987 with a return within the same month. There is no listing of any absence from the United States in 1985 or in 1986. Also, the one absence listed by the applicant in June 1987, is contrary to information in CIS records which showed that the applicant entered the United States with a B1 non-immigrant visa on July 15, 1987, and no departure date is shown.

The inconsistencies noted above, and the applicant's inability to rebut and/or reconcile the inconsistencies, cast doubt on the credibility of her claim that she entered the United States before January 1982 and resided continuously in an unlawful status from before January 1, 1982

through May 4, 1988. 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 without competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

It is undisputed that the applicant submitted sworn statements on three separate dates - August 9, 1990, April 6, 1992 and September 21, 1990 - stating that she first entered the United States to reside permanently in July 1988. Documents in the record indicate that the applicant was issued a non-immigrant visa in Mexico on May 30, 1985, and that she made at least three entries into the United States using the visa and did not overstay or violate her status as confirmed by the applicant at her LULAC interview on August 9, 1990. The applicant has failed to establish that she continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988 as required for adjustment under the LIFE Act.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that she entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A). Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

The appeal will be dismissed, and the application denied.

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