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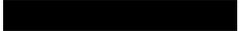


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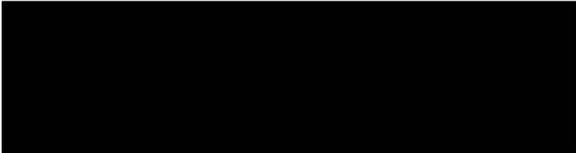
IN RE: Applicant:



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. 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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the 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 he 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 counsel asserts that the director failed to properly evaluate the documentation submitted by the applicant in support of his application. In counsel's view, the documentation in the record is sufficient to establish that the applicant resided in the United States continuously in an unlawful status from before January 1, 1982 through May 4, 1988.

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).

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 applicant, a native of Guatemala who claims to have lived in the United States since February 1980, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on June 9, 2003.

In a Notice of Intent to Deny (NOID) dated May 14, 2007, the director indicated that the evidence of record was insufficient to establish that the applicant entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status through May 4, 1988. The director noted substantive deficiencies and contradictions in the applicant's testimony at his LIFE legalization interview on November 1, 2006 and documentation in the file with regard to the date the applicant first entered the United States and his years of continuous residence in the country. The applicant was granted 30 days to submit explanations for the discrepancies or submit rebuttal information.

In response, the applicant provided some explanations for the evidentiary discrepancies cited in the NOID and submitted some additional documentation. On July 26, 2007, the director denied the application, indicating that the rebuttal information and additional evidence failed to overcome the grounds for denial.

The applicant filed a timely appeal, asserting that the director failed to properly evaluate the evidence in the record. Specifically, counsel asserts that the director did not give due weight to the applicant's testimony as well as the affidavits submitted on his behalf. Counsel asserts that the director should ignore information on the applicant's Form I-589 (asylum application) because it was prepared by a "priest representing a volunteer organization, that the application had been in English and not translated into Spanish and that the [applicant] had signed [the application] as requested without having full knowledge and understanding of the facts contained therein." In counsel's view, the documentation in the record is sufficient to establish that the applicant resided continuously in the United States from before January 1, 1982 through May 4, 1988. No new evidence is submitted on appeal.

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 he 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 he has not.

The documentation that the applicant submits in support of his claim that he entered the United States before January 1, 1982, and resided continuously in an unlawful status through May 4, 1988, consists of the following:

- A letter from Masters Art & Frame Co. Inc., dated April 14, 1990, stating that applicant was employed from March 1980 to December 1984.
- Several letters and affidavits from friends and acquaintances, dated in 1990 and 2003.
- Two copies of Form W-2, Wage and Tax Statements, for the years 1985 and 1986.
- Two partial copies of Form 1040A, U.S. Individual Income tax Returns, for the years 1985 and 1986.
- A copy of a Notice of Determination of Disability Insurance from the State of California, Employment Development Department, dated October 15, 1987.
- Two copies of letters from [REDACTED], M.D. of Franklin Medical Group in Los Angeles, California, dated August 10, 1987, and September 29, 1987.
- A copy of a disability certificate from [REDACTED] M.D., dated July 30, 1987.
- A photocopy of a letter envelope addressed to the applicant at [REDACTED], Los Angeles, California, from an individual in Guatemala, with a partially legible postmark date that appears to be November 15, 1985 .
- Two photocopies of rent receipts with handwritten notations dated in 1986 and 1987.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each affidavit and letter in this decision.

A copy of the applicant's expired Guatemalan passport in the file indicates that he was issued a passport # [REDACTED] on June 21, 1982, in Guatemala. The passport also shows that the applicant was issued a Mexican visa in Guatemala on February 1, 1985, which the applicant used to enter Mexico on February 5, 1985. This evidence appears to show that the applicant was in Guatemala at the time the passport was issued. There is no evidence in the record to explain how the applicant acquired the passport any other way. The information on the applicant's passport and the absence of any objective evidence to establish when the applicant entered the United States cast doubt on the veracity of his claim that he entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status through May 4, 1988.

Also in the file is a Record of Deportable Alien (Form I-213), dated February 17, 1985, indicating that the applicant and three other men from the same town in Guatemala left their homes on February 5, 1985 and entered legally into Mexico as tourists at Tapachula Chias on the same day. The applicant and the other individuals crossed the border into the United States

illegally on February 17, 1985, and were apprehended by the border patrol around Naco, Arizona. The applicant was issued an Order to Show Cause, Notice of Hearing, and Warrant for Arrest of Alien (OSC) on the same date and released. The applicant did not claim residence in the United States at the time of apprehension. At his removal hearing on May 1, 1985, the applicant testified that he left Guatemala on February 5, 1985. Again the applicant did not claim prior residence in the United States before 1985.

On a Form I-687, Application for Status as a Temporary Resident, which the applicant filed in May 1990, the applicant listed the following residential addresses in the 1980s:

Residences:

- [REDACTED], Los Angeles, California, from February 1980 to January 1982;
- [REDACTED], Los Angeles, California, from January 1982 to the present (April 1990);

Employers:

- Master of Arts & Frame in Los Angeles, California, from March 1980 to December 1984;
- [REDACTED] in Los Angeles, California, from January 1985 to December 1987;
- Self- Employed, from December 1987 to the present (April 1990).

On a Form G-325A (Biographic Information) filed in February 1985 with his Form I-589 (asylum application), the applicant listed the following addresses and employers during the 1970s and 1980s:

Residences:

- [REDACTED] Santa Rosa, Guatemala, from 1970 to June 1981;
- [REDACTED] Esquintla, Guatemala, from June 1981 to February 1985.

Employers:

- Student in Guatemala, from January 1973 to November 1981;
- Welder for [REDACTED] in Esquintla, Guatemala, from 1982 to February 1985.

On the Form I-589, in response to question #12 (my last arrival in the U.S. occurred on), the applicant indicated February 17, 1985, at Naco, Arizona, on foot.

Thus, the applicant provided contradictory information regarding his initial date of entry into the United States (February 1980 or February 1985), on the two different applications he filed in 1985 and 1991.

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. *See 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.*

Counsel asserts that the information furnished on the applicant's asylum application in 1985 should be ignored because it was prepared by a priest and that the content was not understood by the applicant in his native language. At the applicant's removal proceeding in 1985-1986, the applicant's counsel at the time acknowledged that the applicant filed a Form I-589. The applicant did not disavow any information on the Form I-589. For present counsel to now claim that the applicant was unaware of the content of his asylum application is without merit and not credible.

Even if the AAO overlooked the applicant's inconsistent claims to have entered the United States in February 1980 or in February 1985, the other documentation of record does not demonstrate the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The letter of employment from Masters Art and Frame Company, Inc. in Los Angeles, does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because it did not indicate the applicant's residence during the time of employment, did not indicate whether the information was taken from company records, and did not indicate whether such records are available for review. Nor was the letter supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed during any of the years claimed. For the reasons discussed above, the AAO determines that the employment letter has limited probative value. It is not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The letters and affidavits in the record dated in 1990 and 2003, from individuals who claim to have resided with or otherwise known the applicant during the 1980s, all have minimalist or fill-in-the-blank formats with little personal input by the affiants. Considering the length of time they claim to have known the applicant – in most cases since the early 1980s – the authors provide remarkably little information about his life in the United States and their interaction with him over the years. Nor did the authors submit any documentary evidence – 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 foregoing 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 copies of the Form W-2 Wage and Tax Statements for 1985 and 1985, addressed to the applicant at [REDACTED] Los Angeles, California, appear to be fraudulent. While the information about the applicant and the employers was printed, the amount of compensation and the applicable taxes on the 1986 statement was handwritten over printed numbers. Both statements for 1985 and 1986 were addressed to the applicant at [REDACTED] [REDACTED] in Los Angeles, whereas the applicant listed his address during the same period, on the Form I-687 he filed in 1990, as [REDACTED] in Los Angeles. In view of the possible fraud, the W-2 tax statements have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States during the requisite period for LIFE legalization.

The partial copies of the Form 1040 U.S. Individual Tax Returns for 1985 and 1986 have no probative value as evidence of the applicant's residence in the United States. The copy of the form for 1985 shows the applicant's name without a residential address, and the copy of the 1986 form does not show the name or address of the applicant. In addition, the forms are not accompanied by certified statements from the Internal Revenue Services (IRS), or any other authenticating evidence, to show that the applicant actually filed the returns for those two years.

The copies of the rental receipts dated February 1, 1986 and February 1, 1987, have handwritten notations with no date stamps or other official markings to verify the dates they were written. The receipts identify the applicant's address as "[REDACTED] in Los Angeles" – which conflicts with the information provided by the applicant on his Form I-687, dated April 16, 1990, which identified the applicant's address during 1985 and 1986 as [REDACTED], in Los Angeles. Thus the receipts do not appear to be genuine and are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

Because of the applicant's inclination to submit fraudulent documents, the remainder of the documents in the record – consisting of the letters from [REDACTED] and [REDACTED] and the Notice of Determination of Disability Insurance from the State of California, Employment Development Department, all dated in 1987, and a copy of a letter envelope addressed to the applicant at his [REDACTED] address in Los Angeles, dated in 1985 – also lack credibility as evidence of the applicant's residence in the United States at those times. *See Matter of Ho, id.* Even if the AAO gave some credence to these documents, neither they nor any other documents in the record predate February 1985, the month of the applicant's apprehension after crossing the border from Mexico into Arizona. The AAO concludes that the applicant was most likely truthful on his Forms I-589 and G-352A in February 1985 when indicated that he had lived in Guatemala up to the time he entered the United States in February 1985.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that he 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. 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.