



U.S. Citizenship
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FILE:

MSC 02 235 61870

Office: SAN FRANCISCO

Date: FEB 27 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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. 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 (LIFE) Act was denied by the District Director, San Francisco, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to establish that he entered the United States before January 1, 1982, and that he resided continuously in the United States in an unlawful status since that date through May 4, 1988.

On appeal, applicant asserts that he resided in the United States during the requisite period, but he does not have any evidence except affidavits to prove his physical presence.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) 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 (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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.* at 80. 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, 431 (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).

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing entry into the United States before January 1, 1982, and continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

In the Notice of Decision, dated September 13, 2005, the director determined that the applicant failed to meet his burden of proof. The director denied the instant application and determined that the applicant was ineligible for adjustment of status under LIFE Legalization.

The applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status, dated May 23, 2002. In connection with his Form I-485, the applicant submitted his own sworn affidavit, dated May 17, 2002. He stated that he entered the United States in 1981. He listed his addresses of residences from 1981 to 2002. He also indicated that he was absent from the United States for 30 days in 1987. The record also contains a subscribed and sworn to affidavit by [REDACTED] dated October 11, 1990. The affiant stated that he had personal knowledge that the applicant resided in the United States from 1981 to 1990. The record contains no other evidence to support the applicant's claim.

The record contains a Form I-648, Memorandum Record of Interview made in Examinations, dated October 7, 1992. In his Form I-648, the applicant stated that he first entered the United States in 1989. The record indicates that he made this statement twice. Then he recanted the 1989 entry and stated an entry date of 1979.

The applicant also filed a Form I-687, Application for Temporary Resident Status under Section 245A of the Immigration and Nationality Act on November 1, 2005. In connection with his Form I-687 application, the applicant submitted his own affidavit dated August 16, 2006. In his affidavit, the applicant requested that his Form I-687 application be withdrawn. In his own handwriting, the applicant stated that the reason for his withdrawal was because he first entered the United States on April 11, 1990. He apologized for the confusion and stated that he was a victim of his attorneys.

The applicant has not provided any credible, contemporaneous evidence of residence in the United States during the duration of the requisite period. Based on his own statement, he first entered the United States in 1990. It is concluded that the applicant has failed to meet his burden of proof.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988, as required under 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.

According to an FBI report based upon the applicant's fingerprints, he has the following criminal history:

1. He was arrested on March 2, 1997 and charged with violating section 484(a) of the California Penal Code (PC), *theft* and was convicted.
2. The San Jose Police Department arrested the applicant on August 8, 1988 and charged him on 2 counts of *exhibiting a deadly weapon, hit and run resulting in property damage, and driving with a .08 or higher blood alcohol*. He was convicted on the latter charge in violation of section 23152(b) of the California Vehicle Code (VC).
3. The Santa Rose Sheriff's Office arrested the applicant on May 9, 2000 and charged him with 2 counts of *disorderly conduct and drugs with alcohol, and failure to appear after written promise*.
4. The Santa Rose Sheriff's Office arrested the applicant on November 24, 2001 and charged him with *disorderly conduct and drugs with alcohol*.
5. The Santa Rose Sheriff's Office arrested the applicant on October 1, 2002 and charged him with *disorderly conduct and drugs with alcohol, and probation violation for disorderly conduct, drugs with alcohol*.

An applicant is ineligible for permanent resident status under the LIFE Act if he has been convicted of three or more misdemeanors. 8 C.F.R. §245a.10(d)(1) In the absence of court documents showing the final disposition of all the above charges, the AAO will not make a finding based on the criminal record.

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