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U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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FILE:

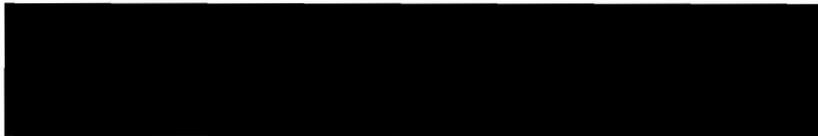
MSC 02 148 61736

Office: MIAMI

Date:

FEB 29 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. 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, Miami, 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 requests that his application be reconsidered. He attaches a statement explaining discrepancies in the record and photographs dated in 1984.

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 Intent to Deny, dated August 6, 2003, the director stated that the applicant failed to establish entry into the United States before January 1, 1982, and continuous unlawful residence during the requisite period. The director granted the applicant thirty (30) days to submit a rebuttal or additional evidence. The applicant submitted a letter stating that all evidence of eligibility was submitted and examined in the Miami office. The applicant requested a review of his file, but he did not submit any additional evidence.

In the Notice of Decision, dated April 9, 2004, the director determined that evidence in the record failed to establish the applicant's claim. The director denied the instant application and determined that the applicant was ineligible for adjustment of status under LIFE Legalization.

The record contains an Affidavit for Determination of Class Membership in *League of United Latin American Citizens v. INS* (LULAC), signed by the applicant on June 7, 1991. In this document, he stated that he first entered the United States on July 1981. On appeal, the applicant asserts that he entered the United States in May 1981. This discrepancy brings into question the credibility of the applicant.

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). The record contains no independent objective evidence to explain the above inconsistency.

It is noted that the record also contains a photocopy of the applicant's passport with a United States visa, valid from May 4, 1979 to May 4, 1983. While there is not an entry stamp in 1981, the passport contains an entry stamp on June 18, 1979. There is no evidence that the applicant entered the United States in 1981. However, there is evidence the applicant entered the United States in 1979. Thus, the applicant has established that he entered the United States before January 1, 1982.

However, the applicant must also establish that he continuously resided in an unlawful status from January 1, 1982, through May 4, 1988. On appeal, the applicant submits several photographs dated in 1984. The people in the photographs and location of the photographs are unidentified. This evidence does not establish the applicant's continuous unlawful residence during the requisite period.

The record also contains a notarized letter by [REDACTED], dated on July 20, 1991. [REDACTED] stated that he rented an apartment to the applicant from December 1986 to June 1990 for \$120.00 per month with all services included. The apartment was located at [REDACTED] in Tampa, Florida. The affiant provided his United States naturalization certificate number. No contemporaneous evidence was submitted to corroborate the affiant's statements. Although not required, the letter did not include any supporting documentation of the affiant's presence in the United States.

The record contains an undated, notarized letter by [REDACTED] [REDACTED] stated that the applicant worked for her in lawn maintenance from 1988 until 1990. She provided her address of residence and telephone number. Although not required, the affiant did not include any supporting documentation of her identity or presence in the United States. Also, the affiant did not provide a specific date of when the employment began in 1988. Therefore, it cannot be determined if the employment period falls within the requisite period. The letter provides minimum probative value.

The record contains a notarized letter by [REDACTED], dated July 20, 1991. [REDACTED] stated that the applicant worked for her since June 1988 as a general maintenance worker at her house. She provided her telephone number and address of residence. This employment period does not occur within the requisite period.

The applicant has not provided any credible, contemporaneous evidence of continuous unlawful residence in the United States from 1982 through 1986. The evidence he has submitted from 1986 to 1988 lacks supporting documentation and sufficient detail. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The absence of sufficiently detailed and supported documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's insufficient evidence and reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

Based on the above discussion, the applicant has established entry into the United States prior to January 1, 1982, but not continuous unlawful residence from January 1, 1982, through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. Therefore, he has failed to meet his burden. 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.