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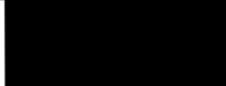
**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY



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FILE:



Office: LOS ANGELES

Date:

JUN 03 2008

[consolidated herein]

MSC 03 248 63580

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

The district director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

On appeal, the applicant submits a brief statement and additional documentation.

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 states 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 petitioner 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 petitioner 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 or petition.

The record of proceedings contains the following information:

- On December 9, 1989, U.S. Border Patrol Agents stopped the applicant while traveling in his private vehicle on Texas Highway 62/180. At that time, the applicant stated that he had last entered the United States by foot on April 23, 1988, without inspection near San Ysidro, California. He also indicated that he was returning to Guatemala and had no intention of returning because his employment in the United States had been terminated.
- On November 10, 1988, the applicant filed a Form I-589, Request for Asylum in the United States. On the application, the applicant indicated that he had last entered the United States on July 13, 1986, without inspection at San Isidro, California. The applicant also indicated that he had been a student at a university in Guatemala from 1979 to 1985, and based his request for asylum on the claim that he was actively affiliated with a student organization at the university that put his life in danger.
- In or about October 1990, the applicant filed a Form I-687, Application to Register Status as a Temporary Resident (Under Section 245A of the Act). On the application, the applicant indicated that he had initially entered the United States in February 1980, and had only departed the United States on one occasion - in October 1987 for a short visit to see his parents in Guatemala.
- On June 5, 2003, the applicant filed the current Form I-485, Application to Register Permanent Resident or Adjust Status, under the LIFE Act. On the application, the applicant indicated that he had last entered the United States in October 1987.
- In an interview on April 12, 2006, the applicant claimed that he initially entered the United States without inspection in February 1981. When asked if he had ever applied for asylum in the United States, he responded in the negative. When shown the application, he said he had forgotten about it and that the situation had been difficult in his country at that time. He further asserted that he was supposed to stay in university in Guatemala until 1985, but had quit in 1981.

In a Notice of Intent to Deny (NOID), dated April 15, 2006, the district director determined the applicant had failed to establish he had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988. The district director noted in the NOID that there were discrepancies between his applications, oral testimony, and evidence provided that called into question the credibility of his case. The district director specifically noted that the applicant had stated under oath at his interview on April 12, 2006, that he had last entered the United States prior to January 1, 1982, and had never applied for asylum; however, the record reflected that he had filed an application for asylum stating that he had resided in Guatemala until 1986. The district director granted the applicant 30 days to explain the discrepancies or rebut any adverse information.

In response, the applicant submitted several affidavits from acquaintances claiming to have known the applicant since on or after February 1980.

The district director denied the application on May 25, 2006, for the reasons stated in the NOID. The district director noted that the applicant had failed to submit any contemporaneous documentation to support his claim of continuous residence in the United States in unlawful status during the requisite time period, that the documentation submitted in response to the NOID did not appear credible, and that it seemed the applicant had changed his initial entry date to fit the qualifications necessary for LIFE adjustment.

The applicant filed an appeal from the denial of his application on June 27, 2006. On appeal, the applicant asserts that he had forgotten that he had applied for asylum because he had never received a work permit in connection with that application. In support of the appeal, the applicant resubmits the affidavits from acquaintances previously provided.

The regulation at 8 C.F.R. § 245a.12(e) provides that “[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods.” Preponderance of the evidence is defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black’s Law Dictionary 1064 (5th ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

Due to the discrepancies in the record and the applicant’s testimony at interview, the AAO determines that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982, and resided in this country in an unlawful status continuously since that time through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, he is ineligible for permanent resident status under section 1104 of the LIFE Act.

It is noted that as a result of being fingerprinted in connection with this application, Citizenship and Immigration Services (CIS) received a report from the Federal Bureau of Investigation (FBI) indicating that the applicant was arrested on October 20, 2006, by the Sheriff’s Office in Ventura, California, for “COUNTS OF BATT W/SERIOUS BODILY INJ.” In any future proceedings before CIS, the applicant must submit evidence of the final court disposition of this arrest and any other charges against him.

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