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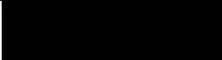
U.S. Citizenship
and Immigration
Services

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FILE:



MSC 02 269 60814

Office: LOS ANGELES

Date:

JUN 04 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.

A handwritten signature in black ink, appearing to read "D. Wieman".

Robert P. Wieman, 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, 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 failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

On appeal, the applicant asserts that he has met his burden and the denial was based on his Form I-821, which did not contain accurate information. The applicant contends that the preparer of his Form I-821, Application for Temporary Protected Status, did not ask for the date of his first entry, but rather if he had been in the United States since 1986.

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.* 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 (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)(v) states that letters from churches, unions or other organizations attesting to the applicant's residence must: identify the applicant by name; be signed by an official whose title is shown; show inclusive dates of membership; state the address where the applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization; establish how the author knows the applicant; and establish the origin of the information being attested to.

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.

In the Notice of Intent to Deny (NOID), dated on January 30, 2006, the director stated that the applicant failed to submit sufficient evidence demonstrating his claimed entry into the United States before January 1, 1982, or his claimed continuous unlawful residence in the United States during the requisite period. The director noted that in the applicant's Form I-821, the applicant stated that he entered the United States in 1986. The director granted the applicant thirty (30) days to explain the discrepancy or rebut any adverse information. In rebuttal, the applicant attempted to reconcile the discrepancy. The applicant stated that the preparer of his Form I-821 only asked him if he had been in the United States since 1986 and not the date of his first entry into the United States. In the Notice of Decision, dated on March 4, 2006, the director determined that the applicant's response failed to overcome the grounds for denial as stated in the NOID. The director denied the instant applicant.

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 continuously resided in an unlawful status in the United States during the requisite period. Here, the applicant has failed to meet this burden.

In support of the applicant's claim, the record contains the applicant's Form for Determination of Class Membership in *CSS vs. Thornburgh*, dated June 9, 1993. The applicant stated that he first entered the United States on August 3, 1981. The record also contains three of the applicant's Form I-821, dated on March 21, 2001, July 3, 2006, and September 27, 2007. In his Form I-821, dated on March 21, 2001, the applicant stated his date of entry into the United States was 1986. In the other

Form I-821s, the applicant stated his date of entry as April 28, 1988. The director noted these discrepancies. On appeal, the applicant contends that the preparer did not ask him for his first date of entry. It is noted that the Form I-821 asks the applicant to list his date of entry into the United States rather than his first date of entry. However, when asked three times after 2000 for his date of entry into the United States, the applicant provided two different dates of entry in the 1980s. These inconsistencies regarding the applicant's entries into the United States cast doubt on his claim to have resided in the United States throughout the requisite period. 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). Here, the record contains no independent objective evidence to explain the above inconsistencies.

In further support of his claim, the record contains the following relevant evidence:

1. A June 9, 1993, affidavit from [REDACTED], who stated that he has personally known that the applicant has resided at [REDACTED], Hawthorne, California, since December 1981 to December 1986. The affiant stated that he is friends with the applicant's landlord. The affiant provided his place of address and telephone number. Although not required, the affidavit failed to include any supporting documentation of the affiant's presence in the United States during the requisite period. The affiant failed to indicate how he dated his acquaintance with the applicant or how frequently he saw the applicant. The lack of details detracts from the credibility of the affiant.
2. A June 9, 1993, affidavit from [REDACTED] who stated that to his personal knowledge the applicant has resided in the United States from August 1981 to the present. The affiant stated that they met at a gas station through a mutual friend in August 1981 and after 2 months became very good friends. The affiant also stated that the longest he has not seen the applicant has been 2 months. The affiant provided his place of residence and telephone number. Although not required, the affidavit failed to include any supporting documentation of the affiant's presence in the United States during the requisite period. The lack of details detracts from the credibility of the affiant.
3. A January 17, 2000, declaration from [REDACTED] pastor at St. Joseph's Catholic Church. The declarant stated that the applicant is an active registered member of the church. He also stated that the applicant consistently participates at Sunday Masses and collaborates with him in ministering to the community at large. The declarant failed to show inclusive dates of membership, state the address where the applicant resided during membership period, and establish the origin of the information being attested to as required under the regulation at 8 C.F.R. § 245a.2(d)(3)(v). The lack of details in the declaration detracts from the credibility of the declarant.

4. An undated verification of employment from [REDACTED], assistant manager. The declarant stated that the applicant had been employed by the company from February 10, 1982 to November 10, 1986, in the capacity of a laborer for \$4.90 per hour. The declarant failed to provide the applicant's address at the time of employment, state the applicant's specific 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 as required under the regulation at 8 C.F.R. § 245a.2(d)(3)(i). The lack of details detracts from the credibility of the declarant.
5. A Beauty Salon Service and Sales receipt, dated March 10, 1985. The applicant's name and date is hand-written on the receipt. The receipt does not contain the applicant's place of residence at the time. This receipt provides minimal probative value.
6. Two U.S. Postal customer's receipts which contains the applicant's name as the sender, dated in 1985 and 1986. These receipts tend to establish the applicant's presence in the United States in 1985 and 1986.
7. The applicant's Form W-2 Wage and Tax Statement 1988 and his 1040 U.S. Individual Income Tax Return for 1988. These documents tend to establish the applicant's presence in the United States in 1988.
8. The applicant's California driver's license, issued on October 1, 1987. His driver's license tends to establish the applicant's presence in the United States in October of 1987.

Although the applicant has submitted a variety of evidence in support of his application, the applicant has not provided sufficient probative evidence of his residence in the United States for the entire duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The absence of sufficiently detailed documentation from before January 1, 1982, through 1984 seriously detracts from the credibility of his claim. While the applicant has submitted evidence which tends to establish the applicant's residence in the United States from 1985 through 1988, the discrepancies in the record regarding his absences from the United States remain unresolved.

Pursuant to 8 C.F.R. § 245a.12(e), 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 reliance upon documents with minimal probative value and discrepancies, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States during the requisite period.

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.

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