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U.S. Citizenship  
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FILE:



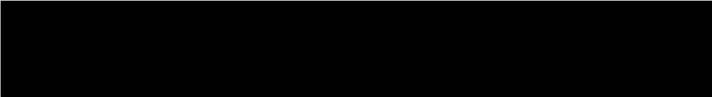
Office: DENVER

Date:

**JUN 30 2008**

MSC 02 298 60931

IN RE: Applicant:



APPLICATION:

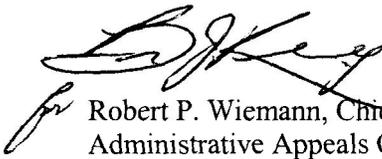
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

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.

  
for 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, Denver, Colorado, 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, and because the applicant had failed to establish that he satisfied the “basic citizenship skills” required under section 1104(c)(2)(E) of the LIFE Act.

On appeal, the applicant states that he has resided in the United States for the past 27 years. The applicant submits additional evidence on appeal.

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 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)(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 August 18, 2006, the director stated that the applicant failed to submit sufficient evidence demonstrating that he entered the United States before January 1, 1982, and his continuous unlawful residence and his physical presence in the United States, during the requisite period. The director noted that the applicant's employment records establish his continuous residence in the United States from 1985 through 1987. However, the applicant had not submitted sufficient evidence for the period from January 1, 1982 to 1985. The director also noted that the applicant had twice failed to demonstrate an ability to write English and had not submitted proof of attending an accredited learning institution to satisfy the requirement. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated June 29, 2006, the director denied the instant application based on the reasons stated in the NOID.

The first issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period. The applicant submitted letters, affidavits, mail envelopes, and employment records as evidence to support his Form I-485 application. Here, the submitted evidence is not relevant, probative, and credible.

#### Affidavits & Letters

In an attempt to establish his continuous residence in the United States during the requisite periods the applicant submitted the following:

- 1) A notarized letter from [REDACTED], dated September 11, 2006, stating that he and the applicant lived together in Houston, Texas, from 1983 to 1985. However, the affiant does not indicate when in 1983 or whether the applicant has resided continuously in the United States from January 1982 to 1983;
- 2) A notarized letter from [REDACTED], dated September 11, 2006, stating that he and the applicant worked together for a contractor at a K-Mart store in Houston from January 1982 until the beginning of 1983. However, the affiant does not specify the date in January 1982

he began his acquaintance with the applicant, and the date in 1983 when his acquaintance ended;

- 3) An undated affidavit from [REDACTED] stating that he has known the applicant since 1984, and that he and the applicant lived together. However, the affiant does not indicate whether the applicant has been a continuous resident since January 1, 1982;
- 4) An undated notarized letter from [REDACTED], stating that he has known the applicant since May 1982. Mr. [REDACTED] also states, however, that he has firsthand knowledge that the applicant resided continuously in the United States since May 1981 because he lived together with the applicant. Given this contradiction, this undated notarized affidavit lacks probative value;
- 5) Photocopies of four paystubs: one from Janitex, Inc., is for the pay period March 9, 1982 to March 22, 1982; and, three from Houston Patio & Garden Centers, Inc., for pay periods August 25, 1982 to September 7, 1982, September 7, 1983 to September 20, 1983, and September 22, 1984 to October 5, 1984, respectively;
- 6) An undated letter from [REDACTED] of St. Francis of Rome Catholic Church, located in Lake Elsinore, California, stating that according to church records, parish staff, and other well known persons in the parish, the applicant has been an active member of that church since 1980. However, as the letter is undated, it cannot be determined whether the applicant had been a member of the church during the requisite period; and,
- 7) Seven mail envelopes addressed to the applicant in Houston, Texas. One of the envelopes is date-stamped December 21, 1981. The remaining 6 envelopes have unclear postmark dates, and are therefore not probative.

The record also reflects employment and tax records for the applicant, and unclear photos depicting the applicant. The photographs do not show when and where they were taken. Therefore, the photographs are not probative.

The applicant has submitted questionable documentation in support of his claim. The applicant submitted a letter from [REDACTED] of St. Francis of Rome Catholic Church, located in Lake Elsinore, California, stating that the applicant has been an active member of that church since 1980. However, the applicant also submitted an affidavit from [REDACTED], and a notarized letter from [REDACTED] indicating that he lived and worked in Houston, Texas, from 1982 to 1985. It is unlikely that the applicant would be an active church member located in Lake Elsinore, California, while he resided hundreds of miles away in Houston, Texas. It is also noted that in a sworn statement during his interview on March 18, 2004, the applicant stated that he moved to California in October 1987. These discrepancies cast considerable doubt on the applicant's claimed residence in Houston from 1981. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective

evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect.

Although the applicant has submitted letters and affidavits in support of his application, the applicant has not provided reliable evidence of his residence in the United States throughout the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period. None of the affiants indicated how they dated their acquaintance with the applicant, how they met the applicant or how frequently they saw the applicant. The absence of sufficiently detailed 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.

The next issue in this proceeding is whether the applicant has established that he satisfied the "basic citizenship skills" required under section 1104(c)(2)(E) of the LIFE Act.

Under section 1104(c)(2)(E)(i) of the LIFE Act ("Basic Citizenship Skills"), an applicant for permanent resident status must demonstrate that he or she:

- (I) meets the requirements of section 312(a) of the Immigration and Nationality Act (8 U.S.C. 1423(a)) (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States); or
- (II) is satisfactorily pursuing a course of study (recognized by the Attorney General) to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

Under section 1104(c)(2)(E)(ii) of the LIFE Act, the Attorney General may waive all or part of the requirements for aliens who are at least 65 years of age or developmentally disabled.

The applicant, who is neither 65 years old nor developmentally disabled, does not qualify for either of the exceptions in section 1104(c)(2)(E)(ii) of the LIFE Act. Nor does he satisfy the "basic citizenship skills" requirement of section 1104(c)(2)(E)(i)(I) of the LIFE Act because he does not meet the requirements of section 312(a) of the Immigration and Nationality Act (Act). An applicant can demonstrate that he or she meets the requirements of section 312(a) of the Act by "[s]peaking and understanding English during the course of the interview for permanent resident status" and answering questions based on the subject matter of approved citizenship training materials, or [b]y passing a standardized section 312 test . . . by the Legalization Assistance Board with the Educational Testing Service (ETS) or the California State Department of Education with the

Comprehensive Adult Student Assessment System (CASAS).” 8 C.F.R. §§ 245a.3(b)(4)(iii)(A)(1) and (2).

In the alternative, an applicant can satisfy the basic citizenship skills requirement by demonstrating compliance with section 1104(c)(2)(E)(i)(II) of the LIFE Act. The “citizenship skills” requirement of the section 1104(c)(2)(E)(i)(II) is defined by regulation in 8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3). As specified therein, an applicant for LIFE Legalization must establish that:

He or she has a high school diploma or general education development diploma (GED) from a school in the United States . . . . 8 C.F.R. § 245a.17(a)(2), or

He or she has attended, or is attending, a state recognized, accredited learning institution in the United States, and that institution certifies such attendance. The course of study at such learning institution must be for a period of one academic year (or the equivalent thereof according to the standards of the learning institution) and the curriculum must include at least 40 hours of instruction in English and United States history and government . . . . 8 C.F.R. § 245a.17(a)(3).

Both 8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3) specify that applicants must submit evidence to show compliance with the basic citizenship skills requirement “either at the time of filing Form I-485, subsequent to filing the application but prior to the interview, or at the time of the interview . . . .”

The regulation at 8 C.F.R. § 245a.17(b) states that:

An applicant who fails to pass the English literacy and/or the United States history and government tests at the time of the interview, shall be afforded a second opportunity after 6 months (or earlier at the request of the applicant) to pass the tests or submit evidence as described in paragraphs (a)(2) and (a)(3) of this section [8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3)]. The second interview shall be conducted prior to the denial of the application for permanent residence and may be based solely on the failure to pass the basic citizenship skills requirements.

Pursuant to 8 C.F.R. § 245a.17(b), the applicant was interviewed on two occasions in connection with his LIFE Act application, on June 29, 2004, and again on January 18, 2005. On both occasions, the applicant failed to demonstrate a minimal understanding of ordinary English and knowledge of civics and history of the United States. The applicant does not dispute this on appeal. The applicant did not submit evidence before or at his second interview of having passed a standardized citizenship test, as permitted by 8 C.F.R. § 312.3(a)(1). The applicant does not have a high school diploma or a GED from a United States school, and therefore does not satisfy the regulatory requirement of 8 C.F.R. § 245a.17(a)(2).

With the appeal, the applicant submits a letter from Spring Institute for Intercultural Learning, dated, September 8, 2006, stating that the applicant has enrolled in an English language instruction program

for one academic year, beginning “September 12” and a letter from private Language Center, dated September 13, 2006, stating that the applicant is enrolled in a two-month citizenship course.

The applicant has failed to establish that he has met the basic citizenship skills requirements. Although the applicant has submitted these documents, indicating his enrollment, the applicant has not provided evidence that he has attended or is attending a course of study at a state recognized accredited learning institution for a period of one academic year (or the equivalent thereof according to the standards of the learning institution) and that the curriculum includes at least 40 hours of instruction in English and United States history and government as required under the provisions of 8 C.F.R. § 245a.17(a)(3).

Therefore, the applicant does not satisfy either alternative of the “basic citizenship skills” requirement set forth in section 1104(c)(2)(E)(i) of the LIFE Act. Accordingly, the AAO will not disturb the director’s decision that the applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

Accordingly, 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.