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U.S. Citizenship
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FILE:

MSC 02 240 63297

Office: PORTLAND, OREGON

Date:

MAR 10 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. All documents have been returned to the office that originally decided your case. 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.

A handwritten signature in black ink, appearing to read "R. Wiemann", written over a horizontal line.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the late legalization provisions of the Legal Immigration Family Equity (LIFE) Act was denied by the District Director (director), Portland, Oregon, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel asserted that the applicant did maintain continuous unlawful residence in the United States during the statutory period.

To be eligible for adjustment to permanent resident status under the LIFE Act, the applicant must establish his or her continuous, unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as continuous physical presence in the United States from November 6, 1986 through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act states in relevant part:

- (i) In General – The alien must establish that he or she entered the United States before January 1, 1982, and 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.

See also 8 C.F.R. § 245a.11(b).

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.

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 AAO maintains plenary power to review this matter on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The federal courts have long recognized the AAO’s *de novo* review authority. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted on appeal.¹

Here, the submitted evidence is not relevant, probative and credible.

The record indicates that on or near June 17, 1993, the applicant applied for class membership in a legalization class-action lawsuit and filed Form I-687, Application for Status as a Temporary Resident. On May 28, 2002, the applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

Regarding the applicant’s claim that he resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988, the record includes:

1. The applicant’s sworn statement written by the applicant in Spanish and translated into English. This statement was given during the applicant’s legalization class membership interview in San Francisco, California on August 13, 1993. In this statement, the applicant attested that he first entered the United States in 1984. He also attested that the employment letter submitted into the record which indicates that he worked for [REDACTED] in the United States prior to 1984 was provided to him by the person who prepared his legalization class membership application and that he had never actually worked for [REDACTED].
2. The Form EOIR-42B, Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents, filed on October 29, 1997, on which the applicant states at item #19 that his first entry into the United States occurred on August 6, 1984.
3. The applicant’s Form I-589, Application for Asylum and Withholding of Deportation, submitted on March 20, 1997 on which the applicant stated and then confirmed while under oath during the April 25, 1997 asylum interview, that he entered the United States during August 1984.
4. The Form G-325A, Biographic Information, submitted with the Form I-589 on which the applicant indicated that he began residing in the United States during 8/1984 and that he

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in this case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

resided in Mexico from birth until 8/1994. When reading the form as a whole, it appears that there is a typographical error in this last date, and that the applicant intended to state at this part that he lived in Mexico from birth until 8/1984.

5. The applicant's sworn statement taken before a Citizenship and Immigration Services (CIS) District Adjudications Officer at the Portland District Office, Portland, Oregon dated and signed by the applicant on February 21, 2007 on which the applicant attested that he first entered the United States in 1981. The applicant was asked to explain his sworn testimony of August 13, 1993 where he indicated that he did not enter the United States until 1984 and that the statement in the record written by the employer [REDACTED] is fraudulent. The applicant explained that he did not remember that 1993 interview very well, and that he did not remember stating that he entered the United States in 1984. The applicant was also asked to explain why he had testified during his April 25, 1997 asylum interview that his date of entry into the United States was August 6, 1984, and why the Form G-325A attached to the Form I-589 indicated that he began residing in the United States during 1984. The applicant explained that he could not remember those forms very well and that he did not know why the Asylum Officer recorded August 6, 1984 as his date of entry. The applicant also stated that he was "in disagreement" with the dates listed on those forms.
6. The Form I-687 which states at item #16 that the applicant entered the United States during August 1981 and at item #36 that the applicant began residing in the United States during 1981.
7. Various affidavits, statements and letters relating to the applicant's presence in the United States.

The only contemporaneous evidence in the record directly relevant to the applicant's claim that he resided continuously in the United States during the statutory period is the copy of the applicant's California Identification Card issued on January 14, 1986, which relates to the period subsequent to August 6, 1984.

On March 9, 2007, the director issued a Notice of Intent to Deny (NOID). In the NOID, the director stated that the applicant had failed to demonstrate continuous residence in the United States during the statutory period. Specifically, the director stated that he intended to deny the application because on August 13, 1993 the applicant stated under oath that he first entered the United States in 1984 and that the employment letter in the file which indicated that he was in the United States before this date and was at that time employed by [REDACTED] is fraudulent. The director added that the applicant stated that he entered the United States on August 6, 1984 on his Form EOIR-42B and on his Form I-589. The director noted that in 2007 the applicant had testified that he entered the United States in 1981 and that various affidavits, statements and letters in the file reflected a 1981 entry date. However, the director found that such evidence was not sufficient to overcome the evidence in the record that pointed to a finding that the applicant did not enter the United States until 1984.

In the rebuttal dated April 16, 2007 submitted in response to the NOID, counsel asserted that the applicant's claims that he had not testified that he first entered the United States in 1984, taken together with the affidavits, statements, letters and applications in the record which indicated that the applicant entered the

United States in 1981 were sufficient to demonstrate that the applicant resided continuously in the United States during the statutory period.

On May 3, 2007, the director denied the application based on the reasons set out in the NOID.

On appeal, counsel asserted: that CIS should not rely on applications in the record which were completed by individuals other than the applicant; and that CIS should look at the evidence in the record as a whole and find that the applicant had met his burden in that he had established that it is probably true that he resided continuously in the United States during the statutory period.

This office would underscore that the applicant testified in 1993 and in 1997, and he also put into a sworn statement which he himself wrote in Spanish, that he first entered the United States during 1984. The applicant also put into a sworn statement written in his own hand that the employment letter in the record which indicates that he was in the United States prior to 1984 is fraudulent.

These contradictions to the applicant's claim that he resided continuously in the United States for the entire statutory period cast serious doubt on this claim and on all the evidence in the record. Such inconsistencies in the record may only be overcome through independent, objective evidence of the claim that he resided continuously in the United States throughout the entire statutory period.

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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

As contemporaneous evidence of his having resided in the United States during the statutory period the applicant submitted only a copy of an identification card issued after August 6, 1984. Thus, the applicant failed to provide contemporaneous evidence that might be considered independent, objective evidence of his having resided continuously in the United States throughout the statutory period that is sufficient to overcome the many discrepancies and contradictory statements in the record.

This office also finds that the various affidavits, statements, letters and applications in the record which make claims that the applicant resided continuously in the United States during the statutory period are not objective, independent evidence such that they might overcome the inconsistencies in the record.

The applicant has failed to establish continuous residence in an unlawful status in the United States from some date prior to January 1, 1982 and through May 4, 1988.

Thus, the applicant is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

Finally, this office notes that according to evidence in the record, in 1994, the City of Long Beach Police Department arrested the applicant and charged him with use or attempted use of a forged credit card with the intent to defraud, as defined within the California Penal Code at 484F(1). The City of Long Beach Prosecutor rejected the charges based on having insufficient evidence to prove that the applicant had knowledge or acted

“in concert” to carry out the offense defined within the California Penal Code at 484F(1). This arrest and the ultimate dismissal of the charges which followed do not affect the applicant’s eligibility for the benefit sought in this matter.

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