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

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FILE:

MSC 01 312 60293

Office: HOUSTON

Date: MAR 25 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. 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, Houston, 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, counsel asserts that the applicant has clarified any discrepancies and met his burden of proof.

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)(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.

The 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 of employment and affidavits as evidence to support his Form I-485 application. Here, the applicant has failed to meet this burden.

In the Notice of Intent to Deny (NOID), dated February 2, 2005, the director stated that the applicant failed to submit evidence demonstrating his entry before January 1, 1982, and continuous unlawful residence in the United States during the requisite period. The director noted that the applicant stated his first departure from the United States was in July 1987 to Mexico, and that he reentered the United States two weeks later without inspection. The applicant also stated that he had not departed the United States since 1987 until September 1998. However, the director noted that the applicant indicated that he had three children born in Mexico in 1985, 1989 and 1999. The director granted the applicant thirty (30) days to submit additional evidence.

In response to the NOID, counsel attempted to resolve the noted discrepancies in the record. Counsel asserted that, during the applicant's interview, the applicant disclosed four absences from the United States in 1984, 1987, 1988 and 1989. In the Notice of Decision, dated March 30, 2005, the director determined that counsel failed to overcome the reasons stated in the NOID and denied the instant applicant.

The record contains a list of the applicant's absences. The applicant indicated that he was absent from the United States for about one month in June 1984 and July 1987. The applicant listed three other absences that fall outside the requisite period.

The record contains a sworn affidavit by § [REDACTED], dated September 2, 1990. The affiant stated that the applicant left the United States on July 14, 1987, to visit his family and returned to Houston on July 28, 1987. The affiant provided her address of residence.

The record also contains a marriage contract by the Government of the State of Guanajuato, Mexico. The contract indicates that the applicant married [REDACTED] on February 27, 1984. However, the applicant failed to indicate he was absent from the United States in February 1984.

It is also noted that the applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status pursuant to Section 245A of the Immigration and Nationality Act on June 3, 1990. In his Form I-687, the applicant indicated only one absence from the United States in July 1987.

The applicant filed a Form I-687, Application for Temporary Resident Status under Section 245A of the Immigration and Nationality Act on August 15, 2005. In this Form I-687, the applicant listed his absences in June 1984 and July 1987. However, he failed to list any absence in February 1984 for his marriage to ██████████ in Mexico. The discrepancies regarding his absences from the United States brings into question the credibility of the applicant.

The record contains five envelopes addressed to the applicant at ██████████ Houston, Texas. The applicant claimed the envelopes were postmarked in 1981, 1982 and 1984; however, the stamps and postmarks have been torn off. The record also contains two envelopes addressed to the applicant in Houston, Texas. The stamps and postmarks are intact for these envelopes, which were postmarked in 1987. On appeal, counsel asserted that the damaged envelopes were received by the applicant that way and the applicant accepted them as such. The AAO does not find this explanation to be credible.

The record also contains a sworn affidavit by _____ dated April 30, 1990. The affiant stated that the applicant worked for him from March 1981 to November 1989 at his company located at ██████████ Houston, Texas. The affiant provided his telephone number. ██████████ failed to provide the applicant's address at the time 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 as required under the regulation at 8 C.F.R. § 245a.2(d)(3)(i).

The record contains numerous rent receipts in the applicant's name, dated in 1982, 1983, 1984, 1985, 1986, 1987, 1988. The receipts indicate that the applicant resided at ██████████ Houston, Texas. The receipts are signed by ██████████

The record contains a State of Texas identification card in the applicant's name and with his photograph. The identification card indicates the applicant's address was ██████████ Houston, Texas. There is no issuance date on the identification card.

The record contains a Houston Soccer Association identification card in the applicant's name and with his photograph. The identification card indicates that the date of registration was May 11, 1980. The card indicates the applicant's address as ██████████ in Houston, Texas.

The record contains a Host Airport Hotels employee card in the applicant's name, issued on October 24, 1978. The applicant never indicated that he worked for Host Airport Hotels in either of his Form I-687s. The card does not indicate where the applicant resided at the time.

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 discrepancies.

A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003). However, anytime an application includes numerous errors and discrepancies, and the applicant fails to resolve those errors and discrepancies after CIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the applicant's assertions. **The applicant was given an opportunity to resolve the noted discrepancies.** The applicant failed to resolve the discrepancies regarding his absences and failed to submit a credible explanation regarding the torn envelopes. As such, 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.

Beyond the decision of the director, the record reflects that on October 21, 1991, the applicant was charged with *driving while intoxicated* in the District Court of Harris County, Texas. On January 8, 1992, the applicant was convicted of *driving while intoxicated*, in violation of section 49.04 of the Texas Penal Code, a misdemeanor (Cause [REDACTED]). The applicant was given a deferred adjudication of guilt and ordered to perform 72 hours of community supervision. This single misdemeanor conviction does not render the applicant ineligible pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a).

Therefore, based on the above discussion, 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.