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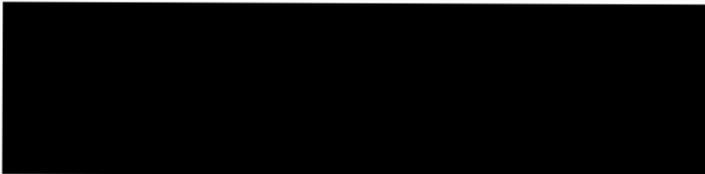
IN RE: Applicant:



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. 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, Dallas, 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 had continuously resided in the United States in an unlawful status from since before January 1, 1982, through May 4, 1988.

On appeal, counsel contends that the applicant's sworn statement, which indicates an absence for more than 240 days, cannot be corroborated, verified, or in any way found to be credible against the remaining evidence in the record.

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.

“Continuous unlawful residence” is defined at 8 C.F.R. § 245a.15(c)(1), as follows: An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.

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 issue in this proceeding is whether the applicant has established continuous unlawful residence in the United States from before January 1, 1982, through May 4, 1988.

In the April 29, 2006, Notice of Intent to Deny (NOID), the director stated that the applicant signed an August 4, 1994, sworn statement indicating that he had departed the United States from September 1987 to June 1988, approximately 240 days. The director granted the applicant thirty (30) days to submit any evidence to overcome the above reason for denial. In rebuttal to the NOID, the applicant submitted additional affidavits. In a July 1, 2006, Notice of Decision (NOD), the director denied the instant applicant based on the reasons stated in the NOID.

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 October 19, 1990. In his Form I-687, Question #35, where asked to list his absences from the United States since his entry, the applicant stated that he went to Mexico to visit family from December 1987 to January 1988.

The record contains a Form for Determination of Class Membership, signed by the applicant on October 8, 1990. The applicant stated that he last entered the United States in January 1988. The applicant also stated that he did not file an application for legalization before May 4, 1988, because he “had gone to Mexico.”

The record also contains a Form I-648, Memorandum Record of Interview made in Examinations Section, signed by the applicant on August 4, 1994. The Form I-648 indicates that the interview was conducted in Spanish. The Form I-648 reflects that, during the interview, the applicant stated he first entered the United States around 1981. The applicant was asked if he had ever departed the United States since his arrival. The applicant stated that he had departed in September 1987 to see his mother, and he returned to the United States around June 1988. The applicant was also asked why he did not file an application for amnesty on or before May 4, 1988. In response, the applicant stated that he was not here. He stated that he went to Mexico in September 1987 and did not return until June 1988. During his interview, in response to two different questions, the applicant stated twice that he was absent from the United States from September 1987 through June 1988.

The applicant's Form I-648 contradicts his statements in his Form I-687 and Form for Determination of Class Membership. In rebuttal to the NOID, counsel contends that the applicant denies knowledge of the contents of his Form I-648. The AAO finds these assertions to be without merit as the interview was conducted in Spanish and the Form I-648 contains the applicant's signature.

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). Counsel submitted the following evidence:

1. A May 23, 2006, affidavit by [REDACTED], who stated that the applicant has continuously resided in the United States since 1987. She stated that she initially met the applicant when he came to work on her farm in Desoto, Texas. The affiant provided her place of residence, telephone number, and a photocopy of her Texas driver's license. This letter reaffirms a previous letter by the affiant, dated on October 13, 1990. The affidavit is inconsistent with the applicant's own statements that he was absent from the United States in 1987-1988. This discrepancy detracts from the credibility of the affiant.
2. A May 22, 2006, affidavit by [REDACTED] who stated that the applicant has continuously resided in the United States since 1986. He stated that he initially met the applicant through the applicant's brother, [REDACTED]. The affiant provided his place of residence and telephone number. The affidavit is inconsistent with the applicant's own statement that he was absent from the United States in 1987-1988. This discrepancy detracts from the credibility of the affiant.
3. A May 11, 2006, declaration by [REDACTED] who stated that he has known the applicant since 1986 when the applicant worked for the [REDACTED] family. The declarant provided his business address and telephone number. The declarant failed to state that the applicant continuously resided in the United States from 1986 through the remainder of the statutory period. The declaration fails to mention the applicant's absence from the United States in 1987-1988. This declaration provides minimal probative value.
4. A May 11, 2006, declaration by [REDACTED], who stated that she has known the applicant since 1986 when the applicant worked for the [REDACTED] family. The declarant provided her business address and telephone number. The declarant failed to state that the applicant continuously resided in the United States from 1986 through the remainder of the statutory period. The declaration fails to mention the applicant's absence from the United States in 1987-1988. This declaration provides minimal probative value.

5. A May 9, 2006, declaration by [REDACTED] who stated that the applicant started working for his company and farm in November 1986. The declarant provided his business address and telephone number. This declaration reaffirms a previous declaration by the declarant, dated on October 18, 1990. In both declarations, the declarant failed to state that the applicant continuously resided in the United States from 1986 through the remainder of the statutory period. Both declarations failed to mention the applicant's absence from the United States in 1987-1988. This declaration provides minimal probative value.
6. An October 13, 1990, declaration by [REDACTED] who stated that he has known the applicant since 1981 through his brother. The declarant provided his telephone number. The declaration failed to indicate where the declarant met the applicant, the applicant's address during the requisite period, and whether the applicant continuously resided in the United States during the requisite period. The declaration makes no mention of the applicant's absence in 1987-1988. The declaration provides little probative value.
7. An October 8, 1990, affidavit from [REDACTED] who stated that he has known the applicant since May 4, 1981, and that the applicant has resided in the United States since 1981. The affiant stated that he met the applicant while working at Perfect Tinning & Chemical Co. in Lancaster, Texas. The affiant provided his place of residence and telephone number. The affiant failed to provide the applicant's place of residence for the duration of the requisite period. Although not required, the affiant failed to include any supporting documentation of the affiant's presence in the United States during the requisite period. The declaration provides minimal probative value.

The above affidavits and declarations failed to address the discrepancies in the applicant's statements. Two affidavits stated that the applicant has continuously resided in the United States since 1986 and 1987. Neither affidavit mentioned the applicant's absence in 1987-1988. The affidavits are inconsistent with the applicant's own statements. All of the declarations failed to indicate that the applicant was absent from the United States at any point in 1987-1988. The declarations provided little probative value and failed to reconcile the inconsistency in the applicant's own statements. Thus, the record contains no independent objective evidence to explain the inconsistency between the applicant's Form I-687, Form for Determination of Class Membership and Form I-648.

Anytime an application includes serious discrepancies, and the applicant fails to resolve those discrepancies after CIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the applicant's assertions. Here, the applicant failed to resolve the inconsistency in his own statements. This inconsistency seriously brings into question the credibility of his claim. Given the applicant's inconsistent statements and documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States during the requisite period.

Based on the above, the applicant has failed to establish continuous residence in an unlawful status in the United States from before January 1, 1982, 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.

Beyond the decision of the director, the record reflects that on June 9, 1998, the applicant was granted voluntary departure in removal proceedings in Dallas, Texas (Case No. [REDACTED]). It is further noted that the record indicates the applicant was arrested by the Cleburne, Texas Sheriff's Office on September 18, 2003, and charged with *assault*. The final disposition of this charge is not in the record of proceeding.

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