



U.S. Citizenship
and Immigration
Services

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FILE:

MSC 02 200 60596

Office: DALLAS

Date: **MAY 13 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. 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 asserts that the director erred in determining that the applicant was outside the United States for a period of 60 days or more. Counsel contends that the director did not give proper weight to the applicant's earlier statements 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 since before January 1, 1982, through May 4, 1988.

In the March 25, 2006, Notice of Intent to Deny (NOID), the director stated that the applicant signed a sworn statement indicating that he had departed the United States for two months in January 1982. 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 his own affidavit. In the June 16, 2006, Notice of Decision (NOD), the director denied the instant applicant based on the reasons stated in the NOID.

The record contains a Form I-648, Memorandum Record of Interview made in Examinations Section, signed by the applicant on September 27, 1994. The Form I-648 indicates that the interview was conducted in Spanish. The Form I-648 Attachment reflects that, during the interview, the applicant stated departed the United States in January 1982 to get married and returned to the United States two months later. There is nothing in the record to demonstrate that emergent reasons prevented the applicant from returning to the United States within the time period allowed.

The record also contains the applicant’s Form I-687, Application for Temporary Resident Status pursuant to Section 245A of the Immigration and Nationality Act. It is noted that the Form I-687 is not signed or dated by the applicant. In the Form I-687, Question #35, where asked to list his absences from the United States since his entry, two absences are listed: 1) February 27, 1982 to March 15, 1982, to Mexico for vacation, and 2) December 1, 1982, through December 15, 1982 to Mexico for vacation. The record also contains a March 7, 2002, affidavit from the applicant. The applicant stated that he went to Mexico on February 27, 1982, for personal business and returned on March 15, 1982. The applicant’s statements are inconsistent with the applicant’s statement in his Form I-648.

In rebuttal to the NOID and in order to reconcile the above discrepancy, the applicant submitted his own affidavit, dated on April 1, 2006. The applicant stated that he departed the United States in early 1982 to marry his wife. The applicant stated that he was outside the United States for just over two weeks. The applicant stated that while he did not remember the exact dates of travel, he

believes the dates from his Form I-687 are correct. As previously mentioned, his Form I-687 was not signed or dated by the applicant.

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 applicant has only submitted his own affidavits. The applicant has not submitted any independent objective evidence to reconcile the above discrepancy.

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 discrepancy seriously brings into question the credibility of his claim. Given the applicant's inconsistent statements, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States during the requisite period.

Beyond the decision of the director, an applicant is ineligible to adjust status to LPR status under LIFE Legalization if he or she is inadmissible to the United States. An applicant is inadmissible if he or she has committed three or more misdemeanor in the United States. Here, the applicant has committed three misdemeanors in the United States, which render him ineligible pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a).

The record reflects that on December 12, 1992, the applicant was charged with *driving while intoxicated*, in violation of section 49.04 of the Texas Penal Code in the Country Criminal Court at Law #2 of Grayson County, Texas (Case No. [REDACTED]). On January 8, 1993, the applicant pled guilty and was convicted of *driving while intoxicated*, a class A misdemeanor conviction. The applicant was sentenced to 90 days confinement, a fine of \$750.00, and 2 years probation.

The record also reflects that on March 7, 2003, the applicant was charged with *driving while intoxicated 2nd*, in violation of section 49.04 of the Texas Penal Code in the Country Criminal Courts 8 in Dallas County, Texas (Case [REDACTED]). On May 20, 2004, the applicant pled nolo contendere and was convicted of *driving while intoxicated 2nd*, a class A misdemeanor conviction. The applicant was sentenced to 120 days confinement in the Dallas County Jail.

Finally, the record reflects that on April 3, 2004, the applicant was charged with *driving while intoxicated 2nd*, in violation of section 49.04 of the Texas Penal Code in the Country Criminal Courts 8 in Dallas County, Texas (Case [REDACTED]). On May 20, 2004, the applicant pled nolo contendere and was convicted of *driving while intoxicated 2nd*, a class A misdemeanor conviction. The applicant was sentenced to 120 days confinement in the Dallas County Jail.

Based on the above discussion, the applicant has failed to establish continuous residence in an unlawful status in the United States since before January 1, 1982, through May 4, 1988, as required

under Section 1104(c)(2)(B) of the LIFE Act. The applicant is also ineligible pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a). Given this, he is ineligible for permanent resident status under Section 1104 of the LIFE Act.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

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