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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 01 360 60425

Office: NEW YORK

Date:

NOV 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. 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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to demonstrate 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 contends that the applicant submitted sufficient evidence to establish his continuous residence in the United States since he first entered on or about March 16, 1981. Counsel asserts that the affidavits could not be corroborated or updated because throughout the years affiants moved or passed away.

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.

Although this term is not defined in the regulations, *Matter of C-*, 19 I. & N. Dec. 808 (Comm. 1988) holds that *emergent* means “coming unexpectedly into being.” As discussed further below, the applicant has not submitted any evidence to establish that an emergent reason delayed his return to the United States.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date through May 4, 1988. See § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant 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 section 1104 of the LIFE Act. 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.* at 80. 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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.12(f).

The issue in this proceeding is whether the applicant (1) entered the United States before January 1, 1982, and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of attestations from friends; letters from employers, churches, and landlords; two paystubs dated in 1983; a 1984 Form W-2; and two receipts dated in 1982 and 1983. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision.

The attestations from [REDACTED] all contain statements that the affiants have known the applicant for several years and that they attest to the applicant being physically present in the United States during the required period. These affidavits fail, however, to establish the applicant's continuous unlawful residence in the United States for 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; an applicant must provide

evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.

None of the witness statements provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

The affidavits from [REDACTED], and [REDACTED] provide a brief description of how they met the applicant. However, the affiants fail to include details regarding the applicant's places of residence, the circumstances of his residence over the years of their claimed relationships, or their frequency of contact with him during the requisite period. Therefore, they constitute only limited evidence of the applicant's residence in the United States during the statutory period.

The affidavit from [REDACTED] indicated that the applicant rented an apartment in the affiant's house from December 1984 to the present (1990). Another affidavit (signature illegible) indicated that the applicant rented an apartment from March 1981 to November 1984 in New York. These affidavits are consistent with the applicant's Form I-687, Application for Status as a Temporary Resident, dated September 10, 1992. Accordingly, these affidavits will be given some weight as evidence of the applicant's residence in the United States during the requisite period.

The two employment affidavits that were submitted by the applicant's former employers are also of little value because they fail to conform to the regulatory standards as stated in 8 C.F.R. § 245a.2(d)(3)(i). The affiants fail to provide the applicant's address at the time of employment, 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. However, the record includes pay stubs dated in May 1983 and a 1984 Form W-2 from Ohio Bag Corp. This evidence will be given some weight as evidence of the applicant's residence in the United States in 1983 and 1984.

The record also includes church declarations from [REDACTED]. Both declarations fail to conform to the regulatory standards as stated at 8 C.F.R. § 245a.2(d)(3)(v). Sister [REDACTED] failed to state the address where the applicant resided during the

membership period or to establish the origin of the information being attested to. She also failed to indicate when or how she first met the applicant. [REDACTED] failed to establish how he knows the applicant or the origin of the information being attested to. Lacking relevant details, these declarations lack probative value and have only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

The final item of evidence is a declaration from [REDACTED], travel agent at Travelcade. She stated that the applicant bought a ticket to travel from Kennedy to Lima, Peru on September 4, 1987, on Eastern Airlines. This is consistent with the applicant's Form I-687 and will be given some weight as evidence of the applicant's absence from the United States in 1987.

While the majority of submitted affidavits and declarations lack probative value, the evidence does indicate that the applicant resided in the United States for some period of time in 1983 and 1984. However, the applicant's claim of continuous residence before January 1, 1982, through May 4, 1988, lacks further credibility based on his own statements.

The record includes a Form G-325, Biographic Information, signed by the applicant under severe penalties for knowingly and willfully falsifying or concealing a material fact. On the Form G-325A, the applicant indicated that his last address outside of the United States for more than one year was a Peru address, where he resided from October 1987 to December 1989. His statement is consistent with the declaration of [REDACTED] who stated that the applicant left the United States in September 1987. This absence of over seven months during the statutory period exceeds the forty-five days permitted in a single absence and the 180 days permitted in the aggregate of all absences from the United States. This absence interrupts the applicant's claim of continuous residence in the United States. The applicant has not submitted any evidence to establish that an emergent reason delayed his return to the United States.

It is also noted that in his G-325A, the applicant also stated that he was married in Peru on January 8, 1982. In addition, the record contains the applicant's Form EOIR-42B, Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents. In his Form EOIR-42B, he stated that he had two children who were born in Peru on [REDACTED]. This information directly contradicts the applicant's Form I-687 in which he indicated only one absence from the United States in 1987. These inconsistencies are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. As stated previously, 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. *See Matter of Ho, supra.* These inconsistencies seriously detract from the credibility of the applicant's claim.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and maintained continuous, unlawful residence from such date through May 4, 1988, as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, 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.