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U.S. Citizenship
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FILE: [REDACTED]
MSC 02 358 62247

Office: TAMPA

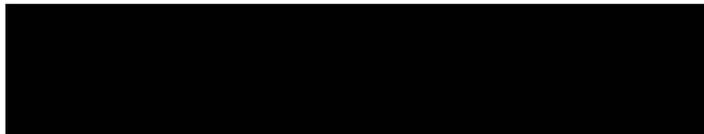
Date: OCT 22 2008

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: On September 28, 2004, the District Director, Tampa, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application, finding that the applicant did not establish, by a preponderance of the evidence, that he entered the United States before January 1, 1982, and resided continuously in the United States, prior to January 1, 1982, and through May 4, 1988. The director concluded the affidavits the applicant submitted were not verifiable and therefore insufficient to establish his burden of proof.

On appeal, counsel for the applicant asserts that the director did not properly apply the preponderance of the evidence standard to the documentation the applicant submitted. Counsel asserts that the applicant provided extensive documentation to support his claim, including twenty sworn statements.

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 and 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 period, 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 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 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). See 8 C.F.R. § 245a.15(b). 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). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

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.

A LIFE Legalization applicant must also provide evidence establishing that, before October 1, 2000, he or she was a class member applicant in a legalization class-action lawsuit. See 8 C.F.R. § 245a.14. In this case, the record reflects that the applicant applied for such class membership by submitting a "Form for Determination of Class Membership in *CSS v. Meese* [*CSS lawsuit*]," accompanied by a Form I-687 "Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act)" dated January 28, 1993.

On September 23, 2002, the applicant submitted the current application. On August 11, 2003, the applicant appeared for an interview based on the application.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden of establishing by a preponderance of the evidence, that his claim of entry into the United States before January 1, 1982, and continuous residence in the United States during the requisite period is probably true. Upon examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has failed to meet this burden.

The record of proceeding contains the following evidence relating to the requisite period:

Letters and Affidavits

- Five sworn statements from individuals who claim to have met the applicant in 1981: [REDACTED], and [REDACTED]

- Seven sworn statements from individuals who claim to have met the applicant in 1982: [REDACTED] and [REDACTED]
- Five sworn statements from individuals who claim to have met the applicant in 1983: [REDACTED] and [REDACTED]
- Two sworn statements from individuals who claim to have met the applicant in 1984: [REDACTED] and [REDACTED]
- A sworn statement from [REDACTED] who claims to have met the applicant in 1985;
- A sworn statement from [REDACTED], who claims to have met the applicant in 1986; and,
- Three sworn statements from individuals who claim to have met the applicant in 1987: [REDACTED], and [REDACTED]

These statements include the affiants' current contact information. They state that they have kept in contact with the applicant or have become close friends with him since the time met. Some of the affiants indicate that the applicant worked at [REDACTED] or that they worked with him at [REDACTED]. Most of the affiants indicate that the applicant lived in a trailer in Plant City, Florida, either with his father or with [REDACTED]

These statements contain minimal details regarding any relationship with the applicant during the requisite period. None of the affiants indicate any personal knowledge of the applicant's claimed entry to the United States. Although the dates and addresses provided are generally consistent with the information provided on the applicant's Form I-687, these statements contain no details about the circumstances of the applicant's residence in the United States other than the location where he lived and where he worked. None of these friends or acquaintances indicates where or when they resided in the United States during the requisite period. They also fail to provide details regarding their claimed relationship with the applicant for over 20 years that would lend credibility to their statements. Lacking such relevant detail, the statements can be afforded only minimal weight as evidence of the applicant's residence in the United States for the requisite period; and,

- A letter, from [REDACTED] owner of [REDACTED]. In the letter, Mr. [REDACTED] asserts that the applicant worked for him from November 1981 to December 1993. Mr. [REDACTED]

states that the applicant worked with his father on his farm. He states that when the applicant and his father first worked at the farm, the farm was located on Maryland Avenue in Plant City. He states that the applicant and his father lived in a trailer he rented for his workers. He states that the applicant and his father lived with [REDACTED]. He states that the applicant stayed in the United States when his father returned to Mexico. This letter can be given little evidentiary weight as it fails to comply with the regulatory requirements at 8 C.F.R. § 245a.2(d)(3)(i). As the applicant's employer, [REDACTED] does not provide any periods of layoff, declare whether the information was taken from company records, or 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 the applicant's landlord, [REDACTED] fails to submit corroborating evidence of the applicant's residence in his house, such as a lease or rent receipts, or in the alternative, an explanation of the payment arrangements that existed with the applicant. Furthermore, there is no evidence in the record that [REDACTED] owned the mobile home in question.

For the reasons noted above, these documents can be given little evidentiary weight and are of little probative value as evidence of the applicant's residence and presence in the United States for the requisite period. Despite counsel's assertion regarding the extensive documentation the applicant submitted, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiants' presence in the United States during the requisite period.

The record of proceedings contains other documents, including the birth certificates of the applicant's four U.S. citizen children born in Florida in 1994, 1997, and 2003; the applicant's marriage certificate, indicating he married [REDACTED], in Hillsborough County, Florida, on July 21, 1993; and the applicant's tax records from 1993 to 2003. All of this evidence is dated after May 4, 1988, and does not address the applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have first entered the United States without inspection in August 1981, and to have resided for the duration of the requisite period in Florida. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has failed to do so. In this case, his assertions regarding his entry are not supported by any credible evidence in the record.

Having examined each piece of evidence, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has not shown by a preponderance of the

evidence he entered into the United States before January 1, 1982, and that he resided continuously in an unlawful status for the requisite period.

The absence of sufficiently detailed and probative documentation to corroborate the applicant's claim of entry and continuous residence for the entire requisite period, detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance on documentation that lacks relevant details and any probative evidence of his entry and residence in the United States from prior to January 1, 1982 through May 4, 1988, the applicant has failed to establish by a preponderance of the evidence that he maintained continuous, unlawful residence in the United States as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act.

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