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U.S. Citizenship  
and Immigration  
Services

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FILE:

MSC 02 219 60268

Office: NEW YORK

Date:

**OCT 30 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:** On August 19, 2006, the District Director, New York, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant failed to submit credible documents to establish, by a preponderance of the evidence, that he took up residence in the United States prior to January 1, 1982, and that he resided continuously here in an unlawful status from January 1, 1982, through May 4, 1988. The director also determined that the applicant was ineligible for adjustment of status under the LIFE Act because he had been expeditiously removed at entry on February 1998.

On appeal, counsel for the applicant simply asserts that there was no legal authority for the applicant's removal. He does not address the applicant's entry into and residence in 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 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)," filed on February 28, 1990.

On May 7, 2002, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On March 23, 2006, the applicant appeared for an interview based on the application.

The first issue in this proceeding is whether the applicant is ineligible to adjust status because he was subject to expedited removal proceedings on February 12, 1998, pursuant to INA § 235(b)(1).

On February 12, 1998, the applicant presented himself for admission at JFK airport with a valid Employment Authorization Document (EAD) and an approved Form I-512, Authorization for Parole of Alien. As noted on the Form I-275 Withdrawal of Application for Admission, although the CBP (Customs and Border Patrol) inspector concluded that the applicant was a CSS/LULAC class member, the inspector determined that according to an unnamed Ninth Circuit Court of Appeals decision, "CSS class members [were] no longer entitled to any immigration benefits based on their claimed CSS class membership." The inspector concluded that the applicant was an immigrant not in possession of a valid, unexpired immigrant visa under INA § 212(a)(7)(A)(i)(I), served the applicant with a Form I-860, Notice and Order of Expedited Removal, and ordered the applicant removed on February 12, 1998.

Pursuant to INA § 245A(d)(2)(A), in the determination of an alien's admissibility under INA § 245A(a)(4)(A), § 212(a)(7)(A) shall not apply. Therefore, the AAO finds that the applicant is not ineligible to adjust status on this basis. The director's decision to deny the application on this ground is therefore withdrawn.

The second issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden, 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 applicant has provided the following evidence relating to the requisite period:

Letters and affidavits

- A letter from [REDACTED]. The letter is not dated and contains a stamp and signature from a notary but no date indicating when it was notarized. Mr. [REDACTED] lists his current address and telephone number and states that he is a U.S. citizen. He simply asserts that he has known the applicant since 1981 and that the applicant is his best friend. While [REDACTED] states that he has known the applicant for 22 years, he does not indicate when, where, or under what circumstances he met the applicant. He does not indicate whether they first met in the United States or outside the United States. He does not provide any specific details of the circumstances of the applicant's residence in the United States during the statutory period. He does not provide the addresses where the applicant lived and appears to have no personal knowledge of the applicant's entry into the United States. Given this lack of detail, the letter can be given minimal weight as evidence of the applicant's continuous residence or physical presence in the United States during the requisite period; and,
- A letter dated March 8, 2004, from [REDACTED], secretary of the Siri [REDACTED]. Mr. [REDACTED] asserts that the applicant has been a regular member of the congregation since 1985 and performs community service, most notably in the community kitchen. The letter is not notarized. This letter can be given little evidentiary weight and has little probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 245a.2(d)(3)(i). Specifically, [REDACTED] does not explain the origin of the information to which he attests, nor does he provide the address where the applicant resided during the period of his involvement with the temple.

For the reasons noted above, these letters 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. As stated previously, 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 affiant's presence in the United States during the requisite period.

The record of proceedings contains other documents, including a printout from the Internal Revenue Service dated November 6, 2002, indicating that the applicant filed a Form 1040, U.S. Individual Tax Return in 1994 and 2001. These documents all indicate physical presence after May 4, 1988, and do 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 January 1981, and to have resided for the duration of the requisite period in New York. 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.

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.

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 affidavits which lack relevant details, and the lack of 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. 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.