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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: DALLAS Date: OCT 05 2006

MSC 02 156 60945

IN RE: Applicant: [redacted]

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:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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, Texas, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant had failed to establish that he satisfied the "basic citizenship skills" required under section 1104(c)(2)(E) of the LIFE Act.

On appeal, counsel states that the applicant meets the requirements of the LIFE Act because he is attending a state recognized, accredited learning institution. Counsel submits additional documentation in support of the appeal.

Under section 1104(c)(2)(E)(i) of the LIFE Act ("Basic Citizenship Skills"), an applicant for permanent resident status must demonstrate that he or she:

> (I) meets the requirements of section 312(a) of the Immigration and Nationality Act (8 U.S.C. § 1423(a)) (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States); or
>
> (II) is satisfactorily pursuing a course of study (recognized by the Attorney General) to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

Under section 1104(c)(2)(E)(ii) of the LIFE Act, the Attorney General may waive all or part of the above requirements for aliens who are at least 65 years of age or developmentally disabled.

The applicant, who was 33 years old at the time he took the basic citizenship skills test and provided no evidence to establish that he was developmentally disabled, does not qualify for either of the exceptions in section 1104(c)(2)(E)(ii) of the LIFE Act. Further the applicant does not satisfy the "basic citizenship skills" requirement of section 1104(c)(2)(E)(i)(I) of the LIFE Act because he does not meet the requirements of section 312(a) of the Immigration and Nationality Act (the Act). An applicant can demonstrate that he or she meets the requirements of section 312(a) of the Act by "[s]peaking and understanding English during the course of the interview for permanent resident status" and answering questions based on the subject matter of approved citizenship training materials, or "[b]y passing a standardized section 312 test . . . by the Legalization Assistance Board with the Educational Testing Service (ETS) or the California State Department of Education with the Comprehensive Adult Student Assessment System (CASAS)." 8 C.F.R. § 245a.3(b)(4)(iii)(A)(*1*) and (*2*).

The regulation at 8 C.F.R. § 245a.17(b) provides that an applicant who fails to pass the English literacy and/or the United States history and government tests at the time of the interview, shall be afforded a second opportunity after six months (or earlier at the request of the applicant) to pass the tests or submit evidence as described in paragraphs (a)(2) or (a)(3) of this section.

The record reflects that the applicant was interviewed twice in connection with his LIFE application, first on June 13, 2003 and again on January 19, 2004. On both occasions, the applicant failed to demonstrate a minimal understanding of English and minimal knowledge of United States history and government. Furthermore, the applicant has not provided evidence of having passed a standardized citizenship test, as permitted by 8 C.F.R. § 312.3(a)(1).

The applicant, however, could still meet the basic citizenship skills requirement under section 1104(c)(2)(E)(i)(II) of the LIFE Act, if he met one of the criteria defined in 8 C.F.R. §§ 245a.17(a)(2) and (3). In part, an applicant must establish that he meets the following under 8 C.F.R. § 245a.17:

> (2) has a high school diploma or general educational development diploma (GED) from a school in the United States; or
>
> (3) has attended, or is attending, a state recognized, accredited learning institution in the United States, and that institution certifies such attendance. The course of study at such learning institution must be for a period of one academic year (or the equivalent thereof according to the standards of the learning institution) and the curriculum must include at least 40 hours of instruction in English and United States history and government.

The record does not reflect that the applicant has a high school diploma or a GED from a United States school, and therefore does not satisfy the regulatory requirement of 8 C.F.R. § 245a.17(a)(2).

In response to the director's Notice of Intent to Deny issued on January 22, 2004, counsel stated that the applicant had previously been unable to locate a course that would satisfy the requirements of the regulation, but had now found such a class and would provide certification of his attendance as required. On appeal, the applicant submits a March 6, 2004 letter from the Catholic Charities of Dallas Immigration Counseling Services. [redacted] who identified himself as an English and citizenship teacher, signed the letter, and indicates that the applicant is currently enrolled and attending citizenship classes held by the Catholic Charities of Dallas Immigration Counseling Services. Mr. [redacted] also indicates that the course curriculum includes history and government and speaking, writing and reading English.

The documentation from the Catholic Charities of Dallas Immigration Counseling Services does not provide any confirmation that it is "a state recognized, accredited learning institution," or that the course of study is for a period of one academic year (or the equivalent thereof) or that the curriculum includes at least 40 hours of instruction in English and United States history and government as required by 8 C.F.R. § 245a.17(a)(3). Furthermore, 8 C.F.R. § 245a.17(a)(3) requires that the applicant submit certification on letterhead stationery from a state recognized, accredited learning institution either at the time of filing the Form I-485, subsequent to filing the application but prior to the interview, or at the time of the interview. In the instant case, documentation from a state recognized, accredited learning institution should have been submitted to Citizenship and Immigration Services (CIS) prior to or at the time of the applicant's second interview on January 19, 2004. Assuming, arguendo, that the Catholic Charities of Dallas Immigration Counseling Services is a state recognized, accredited learning institution, the applicant still would not qualify for the benefit being sought as the documentation from the Catholic Charities of Dallas Immigration Counseling Services was presented subsequent to the applicant's interview and no evidence indicates that the course is for a period of one academic year and includes at least 40 hours of instruction in English and United States history and government, as required by 8 C.F.R. § 245a.17(a)(3). The applicant has failed to meet this requirement as the letter from the Catholic Charities of Dallas Immigration Counseling Services was presented subsequent to the applicant's interview.

Therefore, the applicant does not satisfy either alternative of the "basic citizenship skills" requirement set forth in section 1104(c)(2)(E)(i) of the LIFE Act. Accordingly, the applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

Beyond the decision of the director, the applicant failed to demonstrate that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988.

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 petitioner 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 or petition.

Although 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

During a legalization interview on November 10, 1988, the applicant stated that he first entered the United States on January 11, 1982. The applicant further stated on his Form I-687, Application for Status as a Temporary Resident, that he had not left the United States since that time.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant submitted the following evidence:

1. A May 23, 1990 notarized statement from [redacted] in which he stated that the applicant worked at the Clear Creek Ranch from November 1980 to December 1986. Mr. [redacted] who indicated that he was the "supervisor," did not indicate the source of the information regarding the applicant's employment or the applicant's address at the time of his employment. 8 C.F.R. § 245a.2(d)(3)(i). Furthermore, this information conflicts with the applicant's statement on the Form I-687 application where he stated that he worked at Clear Creek Ranch from February 1984 to May 1986. In also is inconsistent with the applicant's statement that he first arrived in the United States in January 1982. 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). In a January 11, 2002 sworn affidavit, Mr.

[redacted] stated that the applicant worked at the Clear Creek Ranch in Denton, Texas from November 27, 1980 until March 5, 1987. This statement is inconsistent with Mr. [redacted] earlier statement in that, in his earlier statement, Mr. [redacted] indicated that the ranch was in Sanger, Texas and that the applicant worked there until May 1986. The applicant submitted no evidence, such as canceled paychecks, work schedules or similar documentary evidence to corroborate his employment at the Clear Creek Ranch during the requisite period and to resolve the inconsistencies in the record. Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa application. *Id.*

2. A May 31, 1990 sworn affidavit from [redacted] in which he stated that the applicant lived in Dallas, Texas from November 1980 until the date of the affidavit, and that the applicant lived with him from November 1980 until December 1984. Mr. [redacted] did not indicate the address at which he and the applicant lived, and the applicant submitted no documentary evidence to establish that he and Mr. [redacted] lived at any particular address in Dallas, Texas during the stated time frame. Further, Mr. [redacted] statement that the applicant lived with him in Dallas in 1980 conflicts with the applicant's statement during his November 1988 interview that he first arrived in the United States in January 1982. The applicant submitted no competent independent evidence to resolve this inconsistency. *Id.* In a January 16, 2004 sworn affidavit, Mr. [redacted] stated that he has known the applicant since September 1980. However, Mr. [redacted] did not indicate that his acquaintance with the applicant originated in the United States.

3. A February 18, 2002 letter from [redacted] in which he stated that he has known the applicant since October 1981. Mr. [redacted] did not indicate the capacity in which he knows the applicant or the circumstances of their initial acquaintance. Mr. [redacted] did not state that the applicant was present and living in the United States during the qualifying period.

4. A November 10, 1988 sworn affidavit from [redacted] which she stated that the applicant lived in Dallas, Texas from January 1982 until the date of the affidavit. The affiant did not state in what capacity she knew the applicant and did not indicate the circumstances of their initial acquaintance. In a January 18, 2004 sworn affidavit, Ms. [redacted] stated that she met the applicant at his sister's residence, and that "back in the eighty's [sic] he was living in a Ranch up in Denton, but would come to Dallas very often to see his sister." This statement appears to conflict with the affiant's earlier statement in which she stated that the applicant had lived in Dallas in January 1982. We note that in his May 23, 1990 statement, Mr. [redacted] stated that the applicant worked at Clear Creek Ranch in Sanger, Texas, from November 1980 until December 1986, but did not indicate that the applicant lived at the ranch. We note further that the Mr. [redacted] stated that the applicant lived with him in Dallas from November 1980 until 1984. Both of these statements conflict with the later statement of Ms. [redacted] The applicant submitted no competent independent evidence to resolve this conflict. *Matter of Ho*, 19 I&N Dec. at 591.

5. A May 31, 1990 affidavit from [redacted] in which he stated that the applicant was his brother and that they have lived together in Dallas, Texas since December 1984. In a January 17, 2004 affidavit, Mr. [redacted] stated only that he has known the applicant since December 1, 1984.

6. An April 20, 1988 sworn statement from [redacted] which he stated that the applicant had worked as a sub-contract laborer for him since April 30, 1987. Mr. [redacted] did not indicate the type of business in which he was engaged, but indicated that official records were available upon request.

In this instance, the applicant has submitted affidavits and third-party statements from six individuals, attesting to his continuous residence in the U.S. during the period in question. While affidavits in certain cases can effectively meet the preponderance of evidence standard, the affidavits submitted by the applicant conflict with each other and with the applicant's own statements, and therefore fail to establish by a preponderance of the evidence that the applicant was living unlawfully in the United States during the qualifying period. The applicant submitted no contemporaneous evidence of his presence and residency in the Untied States during the required period.

Given the absence of any contemporaneous documentation and the unresolved inconsistent and conflicting statements in the record, it is concluded that the applicant has failed to establish continuous residence in the U.S. for the required period.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa application proceedings, the burden of proving eligibility for the benefit sought remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

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