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U.S. Citizenship and Immigration Services

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FILE: [redacted] MSC 02 204 64631 Office: DENVER Date: JUN 05 2007

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: Self-represented

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, Denver, Colorado, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant had: 1) failed to establish that he satisfied the "basic citizenship skills" required under section 1104(c)(2)(E) of the LIFE Act; and 2) not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, the applicant requests another opportunity to satisfy the basic citizenship skills requirement, as he was not prepared at the time of his first interview and was very nervous during his second interview.

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 58 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 6 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, on March 17, 2004, and again on October 5, 2004. On the first occasion, the applicant failed to demonstrate a minimal understanding of English and minimal knowledge of United States history and government. On the second occasion, the applicant failed to demonstrate a minimal understanding of English. 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 have met the basic citizenship skills requirement under section 1104(c)(2)(E)(i)(II) of the LIFE Act by showing, pursuant to 8 C.F.R. § 245a.17(a), that he:

(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 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).

The director, in his Notice to Intent to Deny issued on November 4, 2004, informed the applicant of his failure to demonstrate knowledge of the English language. The applicant, however, failed to respond to the notice.

On appeal, the applicant requests another interview. The applicant, however, cites no statute or regulation that compels the director to schedule the applicant for third interview. The regulation only provides *one* opportunity after the failure of the first test. 8 C.F.R. § 245a.17(b).

The evidence submitted by the applicant does not demonstrate that he had attended or was attending at the time of his second interview a state recognized accredited learning institution in the United States that provides a course of study for a period of one academic year (or the equivalent thereof according to the standards of the learning institution) with curriculum including at least 40 hours of instruction in English and United States history and government as allowed under 8 C.F.R. § 245a.17(a)(3). The regulations at § 245a.17(a)(2) and § 245a.17(a)(3) require applicants to submit evidence to show compliance with the basic citizenship skills requirement "either at the time of filing Form I-485, subsequent to filing the application but prior to the interview, or at the time of the interview . . . ." On, appeal the applicant has submitted a letter dated March 31, 2002 from [redacted] a purported instructor in the "Speak English Program" at College Hill Library, stating that the applicant has been "taking 40 hours of English per month" in the program. Ms [redacted] does not list the dates of the applicant's attendance or state that the applicant had completed the program. Not only is the evidence untimely submitted, the letter also does not contain sufficient information showing that the entity is a state recognized, accredited learning institution and that the course of study in question is for the period of one academic year.

As previously discussed, the applicant failed to meet the "basic citizenship skills" requirement of section 1104(c)(2)(E)(i)(I) of the LIFE Act because at his two interviews he did not demonstrate a minimal understanding of the English language.

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.

An applicant for permanent resident status 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. 8 C.F.R. § 245a.11(b).

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 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).

Here, the submitted evidence is not relevant, probative, and credible. In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence:

- An affidavit of witness from a brother-in-law [redacted] of La Puente, California, who attested to the applicant's residence in Los Angeles since February 1981.
- An affidavit of witness from [redacted] of La Puente, California, who attested to the applicant's residence in Los Angeles since February 1981. The affiant based his knowledge on having been a co-worker of the applicant.
- A letter dated March 26, 2002 from [redacted] of La Puente, California, who indicated that he has known the applicant since 1988 and attested to the applicant's character.
- An affidavit notarized from [redacted] of Thornton, Colorado, who indicated that he has known the applicant since November 1986.
- A letter dated March 26, 2002, from [redacted] of La Puente, California, who attested to the applicant's La Puente residences from February 1981 to June 1987 at [redacted] and from July 1987 to September 1991 at 602 Lidford. The affiant asserted that the applicant "became" his gardener and he has remained in contact with the applicant since that time.
- A notarized affidavit from [redacted] of Valinda, California, who indicated that he has known the applicant since July 1987, and attested to the applicant's residence at [redacted] Valinda, California.
- A notarized affidavit from [redacted] of El Monte, California, who indicated that he has known the applicant since February 1981 and attested to the applicant's residence at [redacted] from February 1981 to June 1987.

- Several medical receipts dated in December 1985 and January 1986.
- Several medical receipt dated in December 1985 and January 1986 from [redacted] and [redacted] in Los Angeles, California.
- A medical printout dated December 3, 1985 from [redacted] Inc. in Los Angeles, California.

The director, in his Notice to Intent to Deny issued on November 4, 2004, advised the applicant that the evidence submitted to establish his residence prior to 1986 was insufficient and lacked credibility. The applicant was informed that Mr. [redacted] and Mr. [redacted] attested to one address of residence from 1981 to 1987, but no evidence from the applicant was provided to support this residence. In addition, no evidence of employment or evidence of his children's school records during the requisite years was provided. The applicant was given 30 days to submit a response. The applicant, however, failed to respond to the notice.

The AAO does not view the documents discussed above as substantive enough to support a finding that the applicant continuously resided in the United States from before January 1, 1982 through November 30, 1985. Mr. [redacted] and Mr. [redacted] attest to the applicant continuous residence in the United States since 1981, but provide no address for the applicant, and no detail regarding the nature or origin of their relationships with the applicant or the basis for their continuing awareness of the applicant's residence. Mr. [redacted] attested to the applicant's residence at [redacted] from February 1981 to June 1987, but did not provide any details as to the nature or origin of his relationship with the applicant or the basis for his continuing awareness of the applicant's residence. The applicant has not provided evidence such as a lease agreement, rent receipts, or utility bills to corroborate Mr. [redacted] affidavit. In addition, Mr. [redacted] failed to indicate the actual date of the applicant's employment as his gardener. Although item 36 of the Form I-687 application requests the applicant to list the full name and address of each employer during the requisite period, the applicant failed to provide any information.

Given the credibility issues arising from the documentation provided by the applicant, it is determined that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982 and resided in this country in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant is 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.