U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

L-2

FILE: [redacted] Offices: NEW YORK Date: AUG 26 2008

consolidated herein]
MSC 02 158 62134

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. 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.

for 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 (director) in New York City. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that he resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal the applicant asserts that the evidence submitted is sufficient to establish that he has resided in the United States continuously in an unlawful status since 1981.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. *See* section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

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."

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 its amenability to verification. *See* 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).

The applicant, a native of Bolivia who claims to have lived in the United States since January 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on March 7, 2002.

In a Notice of Intent to Deny (NOID), dated June 2, 2006, the director, citing inconsistencies between the testimony of the applicant at his LIFE legalization interview on January 26, 2005 and other Service records, notified the applicant that the evidence submitted in support of his application called into question the veracity of his claim of continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988. The director specifically noted that the applicant's testimony at his LIFE legalization interview, in which he stated that he traveled to Bolivia to visit his ailing mother from January 1, 1988 to March 1, 1988, and claimed that this was his only absence from the United States from January 1, 1982 to May 4, 1988, is contrary to Service records showing that the applicant entered the United States through the Mexican border around December 18, 1986 and March 8, 1988. The applicant was granted 30 days to submit additional evidence.

The applicant failed to respond to the director's NOID and on June 13, 2006, the director issued a Notice of Decision, denying the application based on the grounds cited in the NOID.

On appeal, the applicant asserts that the evidence submitted is sufficient to warrant approval of his application. The applicant did not submit any additional documentation in support of his claim.

The only evidence of the applicant's residence in the United States before 1986, is a single affidavit from a resident of Elmhurst, New York, dated March 5, 2003, stating that the applicant is her brother, and that he came to live with her and her family at [redacted], Jackson Heights, New York, from January 1981 to January 1988, and from March 1988 to February 1995, as well as from September 1996 to January 2003.

The affiant provides no information about the applicant other than a confirmation of his claimed residence in the United States in the 1980s. The affiant provides no information about his life in the United States and her interaction with him over the years. Nor is the affidavit accompanied by any documentary evidence from the affiant – such as photographs, letters, and the like – of her personal relationship with the applicant in the United States during the 1980s.

In view of these substantive shortcomings, the AAO finds that the affidavit has little probative value. It is not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

The file includes a Record of Deportable Alien (Form I-213), dated December 22, 1986, indicating that the applicant left La Paz, Bolivia on December 17, 1986, and traveled to Tijuana, Mexico by plane, arriving on December 18, 1986. The applicant crossed the border into the United States illegally on December 19, 1986 and was apprehended at San Diego airport on December 22, 1986. The applicant was in possession of a plane ticket to New York at the time he was apprehended. The applicant was issued an Order to Show Cause, Notice of Hearing, and Warrant for Arrest of Alien (OSC) on the same date and released. The applicant did not claim residence in the United States at the time of apprehension.

Also in the file is an Application for Asylum and Withholding of Removal (Form I-589) the applicant filed on May 4, 1995. The applicant stated that he last entered the United States through Tijuana on March 8, 1988. The applicant stated that he was part of a manifestation in his country protesting against the government. That he was imprisoned as a result and that he fled his country to the United States in search of freedom after he was released from prison by the authorities in his country. The applicant stated that he will be arrested and tortured if returned to his country. The applicant did not claim prior residence in the United States.

The conflicting information between the applicant's testimony at his LIFE legalization interview on January 26, 2005, regarding when and why he traveled to his country and other records in the file, calls into question the applicant's claim that he has continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *Matter of Ho,* 19 I&N Dec. 582, 591-92 (BIA 1988).

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A). Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

On three different Form I-687s he submitted over the years – dated November 29, 1990, January 22, 2001, and February 5, 2005 (filed on November 15, 2005), - the applicant stated that he traveled from the United States to Bolivia from January 1988 to March 1988 for "family emergency." Consistent with the Form I-687s, the applicant testified at his LIFE interview on January 26, 2005, that he traveled to Bolivia from January 1, 1988 to March 1, 1988 to see his ailing mother. According to his own testimony, and the information he furnished on the Form I-687s, the applicant did not return to the United States until March 8, 1988

The applicant's absence from the United States - extending from January 1, 1988 to March 8, 1988 - exceeded the 45-day maximum prescribed in the regulation at 8 C.F.R. § 245a.15(c)(1). Absences of such duration interrupt an alien's continuous residence in the United States unless (s)he can show that a timely return to the United States could not be accomplished due to emergent reasons. While the term "emergent reasons" is not defined in the regulations, there is some pertinent case law. In *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), the Board of Immigration Appeals held that *emergent* means "coming unexpectedly into being."

The applicant has submitted no detailed information about his mother's illness, or documentary evidence thereof. Nor has he explained what sort of "emergent reasons" prevented his timely return to the United States from Bolivia within 45 days.

Based on the evidence in the record, the AAO concludes that the applicant has failed to establish that emergent reasons, within the meaning of 8 C.F.R. § 245a.15(c)(1), prevented his return to the United States from Bolivia within 45 days in 1988. On this ground as well, therefore, the applicant has failed to establish his eligibility for legalization under the LIFE Act.

The appeal will be dismissed, and the application denied.

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