identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

L2

[redacted]

FILE: [redacted] Office: MIAMI Date: MAY 14 2010

MSC 01 275 60531

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.

Elizabeth McCormack

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, Miami, Florida, 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 not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988 as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel reiterated the applicant's claim of residence in this country for the required period and asserts that the applicant had submitted sufficient evidence to demonstrate such claim. Counsel contended that the applicant used a B-1 visitor's visa to return to his unlawful residence in the United States on each occasion he was absent from this country in the requisite period. Counsel requested a copy of the record of proceedings and indicated a brief would be forthcoming within thirty days of compliance with this request.

The record shows that United States and Citizenship and Immigration Services or USCIS (formerly the Immigration and Naturalization Service or the Service) complied with counsel's request with Control Number NRC2007069633 and mailed a copy of the record to counsel on April 28, 2009.

As of the date of this decision, neither counsel nor the applicant has submitted a statement, brief, or evidence to supplement the appeal. Therefore, the record must be considered complete.

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. Section 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 periods, is admissible to the United States under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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).

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 since prior to January 1, 1982 to May 4, 1988, the submission of any other relevant document including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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.

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.* At 80. 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. *Id.*

Even if the director has some doubt as to the truth, if the petitioner 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, 431 (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.

The issue to be determined in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Act, on June 8, 1990. With the Form I-687 application, the applicant included a "Form for Determination of Class Membership in League of United Latin American Citizens v. INS (LULAC)" in which he testified that he first entered the United States with a B-1 visitor's visa on an unspecified date in June 1981.

Subsequently, the applicant filed his Form I-485 LIFE Act application on July 2, 2002. The record shows that the applicant was interviewed regarding his Form I-485 LIFE Act application at the USCIS office in Miami, Florida, on February 24, 2006. The record contains a signed sworn statement from the applicant in which claimed that he first entered the United States with a B-1 visitor's visa on an unspecified date in June 1981 and that he used this same visa to make subsequent entries into the country during the period in question.

In support of his claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted photocopied pages from his Pakistani passport. These photocopies pages contain stamps reflecting that the applicant entered the United States with a B-1 visitor's visa on an indeterminate day in May 1982, January 6, 1985, and March 19, 1987. However, the

photocopied passport pages do not contain a stamp to establish that he entered the United States as he had claimed in June 1981 much less any other date prior to January 1, 1982. In addition, the photocopied passport pages contain a stamp demonstrating that the applicant procured the B-1 visitor's visa at the United States Consulate in Karachi, Pakistan on March 18, 1982. The fact that these photocopied passport pages do not contain any evidence to corroborate the applicant's testimony that he first entered the United States with a B-1 visitor's visa in June 1981 diminishes the credibility of his claim of continuous unlawful residence in this country since prior to January 1, 1982.

The applicant included an employment affidavit containing the letterhead of [redacted], in Miami Springs, Florida that is signed by [redacted], who listed his position as vice president. [redacted] declared that since 1982 "[the applicant] has been our sales representative (Sales Agent) for Pakistan." However, [redacted] failed to state the applicant's duties, did not provide the applicant's address of residence during the period this enterprise employed the applicant, and did not provide relevant information relating to the availability of business records reflecting the applicant's employment as required by 8 C.F.R. § 245a.2(d)(3)(i).

The applicant provided a letter containing the letterhead of the First Union National Bank in Jacksonville, Florida that is signed by personal service representative [redacted]. Ms. [redacted] indicated that she was responding to the applicant's inquiry regarding account number [redacted] Ms. [redacted] stated that the bank had been unable to locate the account and the bank's current record retention on account information was seven years. [redacted] noted that no record of the account would exist if the account was closed prior to First Union National Bank's merger with Florida Federal. Although the letter contains the handwritten notation "This account was established in 1982," the notation does not correspond to information provided in the body of the letter and it cannot be determined either who added the notation to the letter or when such notation was added.

The applicant submitted affidavits that are signed by [redacted] and [redacted] Although both of these affiants attested to the applicant's residence in the United States for the period in question or a portion thereof, their testimony was general and vague and lacked sufficient details and verifiable information to corroborate the applicant's residence in this country for the requisite period.

The director determined that the applicant failed to submit sufficient evidence demonstrating his residence in the United States in an unlawful status for the requisite period. Therefore, the director concluded that the applicant was ineligible to adjust to permanent residence and denied the Form I-485 LIFE Act application on June 19, 2006. It must be noted that the director erroneously characterized the applicant's entries into this country with a B-1 visitor's visa on an indeterminate day in May 1982, January 6, 1985, and March 19, 1987 as lawful entries despite the fact that he has always claimed he was returning to an unrelinquished and unlawful residence in the United States that had been initially established in June 1981. The applicant's entries into this country during the period in question cannot be considered as lawful and his residence for

the requisite period must be examined in light of his claim that he was returning to his previous unlawful and unrelinquished residence in this country.

On appeal, counsel asserts that the applicant has submitted sufficient evidence to support his claim of residence in this country for the requisite period. Counsel contends that the applicant used a B-1 visitor's visa to return to his unlawful residence in the United States on each occasion he was absent from this country in the requisite period. However, as has been discussed above, the record is absent evidence and supporting documents containing specific and verifiable testimony to substantiate the applicant's residence in this country from prior to January 1, 1982. Even if director made an error in characterizing the applicant's entries into the United States with a B-1 visitor's visa during the required period as lawful, it is harmless error because the AAO conducts a de novo review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility and making a determination based upon a preponderance of the evidence as required by the regulations at 8 C.F.R. § 245a.2(d)(5) and 8 C.F.R. § 245a.12(e), as well as the precedent decision reached in *Matter of E-- M--*, 20 I. & N. Dec. 77 (Comm. 1989).

The absence of sufficiently detailed supporting documentation and the applicant's failure to provide evidence that he entered this country for the first time with a B-1 visitor's visa in June 1981, seriously undermines the credibility of his claim of residence in this country for the entire requisite period, as well as the credibility of the documents submitted in support of such 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. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he has resided in the United States for the requisite period by a preponderance of the evidence as required under both 8 C.F.R. § 245a.12(e) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's reliance upon documents with minimal or no probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988 as required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis.

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 [or other office] 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 Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The statute at section 212(a)(6)(C) of the Act (previously section 212(a)(19) of the Act) provides:

> Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has

procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Although not noted by the director, the applicant specifically acknowledged that he entered the United States with a B-1 nonimmigrant visitor's visa on an indeterminate day in May 1982, January 6, 1985, and March 19, 1987, but on each occasion he intended to remain in this country beyond his period of authorized stay. The applicant's admission that he procured the B-1 nonimmigrant visitor's visa by misrepresenting his intent to remain in the United States renders him inadmissible under section 212(a)(6)(C)(i) as an alien who by fraud or material misrepresentation procured admission into the United States. Consequently the applicant has failed to establish that he is admissible to the United States as required under 8 C.F.R. § 245a.12(e). The applicant is, therefore, ineligible for permanent residence under section 1104 of the LIFE Act on this basis as well. Although this basis of inadmissibility is waivable and the applicant filed a waiver application, he failed to establish his eligibility for permanent resident status.

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