



U.S. Citizenship
and Immigration
Services

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DEC 19 2006

DEC 10

FILE:

MSC 01 331 60326

Office: LOS ANGELES

Date:

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 office that originally decided your case. 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: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had not established 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. This decision was based on the director's determination that the applicant had exceeded the forty-five (45) day limit for a single absence, as well as the aggregate limit of one hundred and eighty (180) days during this period. 8 C.F.R. § 245a.15(c)(1)(i).

On appeal, counsel asserts that the applicant was "not thinking clearly" when he admitted several periods of disqualifying absences from the United States, and that the record supports that the applicant is eligible for LIFE Act legalization. On October 12, 2006, the AAO contacted counsel to inquire whether an additional brief or evidence had been submitted, because counsel indicated that he would submit additional evidence within 60 days of filing the appeal. In response counsel re-submitted the brief and evidence filed on appeal. Therefore, the record shall be considered complete.

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. See § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b).

"Continuous unlawful residence" is defined at 8 C.F.R. § 245a.15(c), in part:

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 on hundred and eighty days (180) 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. 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 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. [REDACTED]* [REDACTED] 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.

Citizenship and Immigration Services (CIS) regulations provide an illustrative list of contemporaneous documents that an applicant may submit to establish presence during the required period. 8 C.F.R. § 245a.15(b)(1); *see also* 8 C.F.R. § 245a.2(d)(3)(vi)(L). Such evidence may include employment records, tax records, utility bills, school records, hospital or medical records, or attestations by churches, unions, or other organizations so long as certain information is included. The regulations also permit the submission of affidavits and any other relevant document, but applications submitted with unverifiable documentation may be denied. 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). Documentation that does not cover the required period is not relevant to a determination of the alien's presence during the required period and will not be considered or accorded any evidentiary weight in these proceedings.

The applicant is a class member in a legalization class-action lawsuit and as such, was permitted to and did previously file a Form I-687, Application for Temporary Resident Status pursuant to Section 245A of the Immigration and Nationality Act (Act) on September 29, 1992. On August 27, 2001, the applicant filed this Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

The director's determination that the applicant had been absent from the United States for over 180 days was based on the applicant's own testimony taken at the time of his interview at the Los Angeles district office on November 12, 2002, under oath and in the presence of a CIS officer.

The applicant admitted during an interview that he had been absent from the United States for several months at a time in December of 1982, 1983, and 1984. At this interview, the applicant filled out a list of travel periods indicating that he had been absent for more than the forty-five (45) day limit for a single absence and the one hundred and eighty (180) day aggregate for all absences. 8 C.F.R. § 245a.15(c)(1)(i).

On June 30, 2004, the director issued a Notice of Intent to Deny (NOID) informing the applicant that he was not eligible for LIFE Act legalization because he had been absent from the United States for a period of time exceeding the 45 and 180 aggregate days allowable by regulation and had failed to assert or support that his delay in returning to the United States was due to emergent reasons.

In a response dated August 13, 2004, counsel for the applicant asserted that the applicant was medicated, working 70 – 80 hours a week, and thus was not thinking clearly when he made certain admissions. Counsel also asserts that the applicant's original assertions on his Form I-687 are more accurate than recent recollections.

On September 2, 2004, the director denied the application for the reasons set out in the NOID.

On appeal counsel for the applicant asserts the applicant was not thinking clearly when he admitted to several disqualifying absences at an interview in November of 2002.

The applicant admitted during an interview that he had been absent from the United States for several periods of time that each exceeded 180 days in December of 1982, 1983, and 1984. At his interview, the applicant filled out a list of travel periods and indicated that he had been absent from the United States for more than the 45 day limit for a single absence and the 180 day aggregate for all absences. 8 C.F.R. § 245a.15(c)(1)(i). In addition, at a class membership interview on February 9, 1996, the applicant indicated to a CIS officer that he had left and re-entered the United States in May of 1982, and on the applicant's Form I-687 he had a daughter born in Mexico in June of 1982. This indicates that the applicant may have been absent from December of 1981 through May of 1982, as was the pattern of his subsequent absences. Neither counsel nor applicant address these inconsistencies. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

It is not sufficient for counsel to merely assert that an applicant was "not thinking clearly" and that CIS should thus disregard information obtained during a crucial part of its limited investigative process. In addition, unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); [REDACTED], 19 I&N Dec. 1 (BIA 1983); *Matter of [REDACTED]*, 17 I&N Dec. 503, 506 (BIA 1980). The applicant has not asserted that his delays in returning to the United States for these years were due to emergent reasons, pursuant to 8 C.F.R. § 245a.15(c)(1).

The applicant has submitted a document labeled "Medical Care Status" from Health Care Partners medical group with an unclear date which indicates that the applicant received treatment on January 13, 2003, for back pain, and a number of other documents referencing a January 13, 2003, doctor's visit. This document is not relevant to a determination of the applicant's eligibility because there is no basis in law for an exception due to illness, the applicant could have requested to re-schedule the interview but chose not to do so. The applicant's assertion of being medicated due to illness is a recent fabrication, supported by the fact that the medical documents submitted indicate that the applicant had not visited the doctor until several months after the interview and no mention of any prescribed medication is shown.

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). The applicant has submitted a number of letters and affidavits from former employers, friends and other acquaintances, tax records, medical records and correspondences from the Department of Motor Vehicles, Internal Revenue Service, and insurance companies. These documents are general in nature, do not address the issue of the applicant's yearly absences in 1982, 1983, and 1984, and fail to reconcile the applicant's admission under oath.

The applicant has made inconsistent representations and admitted under oath that he was absent for on several occasions for a period of time exceeding the maximum allowable absence of 45 days or 180 days aggregate. It is the applicant's burden to establish eligibility, and in this case the applicant

has failed to legitimately explain several disqualifying absences and other inconsistent testimony. Therefore, the applicant's assertions are not credible and the application will be denied.

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