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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



MSC 02 134 64982

Office: Houston

Date:

MAY 11 2006

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. All documents have 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, Houston, Texas, and is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant had not established that he resided in the United States in a continuous unlawful status from 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 district director's conclusion that the applicant exceeded the forty-five (45) day limit for a single absence as set forth in 8 C.F.R. § 245a.15(c)(1)(i), and he had not established that an emergent reason delayed his return to the United States.

On appeal, counsel states that the applicant was continuously physically present in the United States because his absences were brief, casual, and innocent. Counsel contends that the applicant was absent from the United States during the requisite period for a maximum of thirty-six days on any single occasion and eighty-two days in the aggregate.

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)(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 must establish continuous physical presence in the United States in the period beginning on November 6, 1986 and ending on May 4, 1988. *See* 8 C.F.R. § 245a.11(c).

The regulation at 8 C.F.R. § 245a.16(b) reads as follows:

For purposes of this section, an alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences from the United States. Also, brief, casual, and innocent absences from the United States are not limited to absences with advance parole. Brief, casual, and innocent absence(s) as used in this paragraph means temporary, occasional trips abroad as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.

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 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 (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 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to 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. While the district director concluded that the applicant’s continuous residence in this country for the requisite period had been broken when he was absent from the United States from November 30, 1986 to January 5, 1987, the evidence contained in the record cannot be considered to support this conclusion.

The applicant submitted a claim to class membership in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (Act) on or about March 8, 1995. At part #35 of the Form I-687 application where applicants were asked to list all absences from the United States beginning from January 1, 1982, the applicant indicated that he had been absent from this country on five separate occasions when he traveled to Mexico for visits of thirteen days from May 15, 1982 to May 28, 1982, seven days from January 10, 1983 to January 17, 1983, eleven days from December 20, 1985 to December 31, 1985, thirty-six days from November 30, 1986 to January 5, 1987, and sixteen days from July 15, 1987 to July 31, 1987.

The applicant subsequently submitted his Form I-485 LIFE Act application on February 11, 2002. The record shows that the applicant was subsequently interviewed regarding his LIFE Act application on November 14, 2002.

In the notice of intent to deny issued on January 20, 2004, the district director noted that the applicant had been interviewed on the date cited above. The district director stated that the applicant acknowledged the five absences listed on the Form I-687 application during the interview and informed the interviewing officer that the purpose of the absences was to visit family in Mexico. However, the record does not contain the interviewing officer's notes or any other documentation to support the district director's conclusions regarding the applicant's testimony during this interview. Further, the applicant's absences listed on the Form I-687 application do not exceed either the forty-five day limit for a single absence or the one hundred-eighty day limit for absences in the aggregate set forth in 8 C.F.R. § 245a.15(c)(1). Consequently, it is not necessary to examine the issue of whether an emergent reason delayed the applicant's return to the United States from any of the absences because the determination that these absences broke his continuous residence in this country for the requisite period was erroneous. As such, the only remaining issue to be examined in this proceeding is whether the applicant has submitted sufficient evidence to establish continuous unlawful in this country from prior to January 1, 1982 to May 4, 1988.

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 Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

At part #33 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant listed an unspecified "P.O. Box" in Cutler, California from January 1981 to January 1986 and [REDACTED] in Orosi, California from January 1986 to January 1991. While the applicant may very well have used a post office box as his mailing address from January 1981 to January 1986, he failed to provide any specific testimony relating to his actual place of residence in the United States for this period. The fact that the applicant listed an unspecified post office box rather than a street address as his residence seriously undermines his claim of residence for the period from January 1981 to January 1986. In addition, the address the applicant provided as his residence from January 1986 to January 1991, [REDACTED] in Orosi, California is incomplete in that does not specify the particular road that such address is located. Further, when the address [REDACTED] in Orosi, California, is entered into the Zip Code Lookup at the United States Postal Service's website at <http://zip4.usps.com>, the results appear as follows: "We're sorry! We were unable to process your request. The address was not found. Please check the address below." The applicant's own testimony relating to his residences in this country for the requisite period must be considered as minimal at best and is not amenable to verification. The applicant failed to provide any explanation as to why he failed to provide a listing of specific and verifiable addresses of residence in the United States from prior to January 1, 1982 to May 4, 1988.

In support off his claim of continuous residence in this country since prior to January 1, 1982, the applicant included an affidavit signed by [REDACTED] stated that he was the manager of property located at [REDACTED] in Cutler, California and the applicant had been a tenant at this address from December 1981 to February 1986. However, [REDACTED] failed to provide any testimony relating to the applicant's residence in this country after February 1986. The applicant also submitted an affidavit signed by [REDACTED] who stated that he lived with the applicant at [REDACTED] in Orosi, California and then another address in Los Angeles, California from January 1986 to

November 1991. However, the address [REDACTED] provided as the applicant's residence beginning in January 1986, [REDACTED] in Orosi, California is incomplete in that does not specify the particular road that such address is located. Further, [REDACTED] failed to provide any testimony relating to the applicant's residence in this country prior to January 1986. The fact that both of these affidavits contain vague and incomplete testimony relating to the applicant's residence in this country for the entire requisite period lessens the probative value of such documents.

On January 17, 2006, the AAO issued a letter to the applicant and counsel informing both parties that the applicant had failed to provide a listing of specific and verifiable addresses of residence in the United States from prior to January 1, 1982 to May 4, 1988 at part #33 of the Form I-687 application. The applicant was requested to provide a complete, specific, and verifiable listing of his addresses of residence in this country for the requisite period. The applicant was granted sixty days to respond to this request. However, as of the date of this decision, neither the applicant nor counsel has submitted a response. Therefore, the record must be considered complete.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

Given the applicant's own inability to provide specific verifiable testimony regarding his addresses of residence in this country for the requisite period and his reliance upon two affidavits with minimal 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.

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