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U.S. Citizenship
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Services

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FILE:



Office: LOS ANGELES

Date:

MAR 07 2007

MSC 01 272 60398

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:

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, 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 demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988.

On appeal, the applicant asserts that he has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. The applicant submits copies of documents previously provided in support of his appeal.

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:

- Wage and tax statements for 1981 to 1983 from [redacted] California, which listed the applicant's California address as [redacted] a.

- Wage and tax statements for 1984 to 1987 from [REDACTED] which listed the applicant's California address as [REDACTED], Alhambra.
- Copies of Income tax returns, Form 1040s for 1981 through 1987.
- Several receipts dated June, August and October 1984; February, May and September 1985; February July and November 1986; January, February and September 1987; and January 1988.
- An affidavit notarized December 16, 1988 from V [REDACTED] of Alhambra, California, who indicated that the applicant rented one of his bedrooms at [REDACTED] from October 1980 to January 1984.
- A social security statement dated June 26, 2000 from the Social Security Administration, which reflected the applicant's earnings from 1989.

On November 6, 2003, the director issued a Form I-72 advising the applicant to submit a social security printout under his name with the social security number listed on the wage and tax statements. The applicant, in response, submitted:

- Documentation from the Internal Revenue Service (IRS) dated December 29, 2003, regarding his 1982 income tax return refund.
- Documents from the IRS dated February 16, 2004 regarding taxes owed for 1986 and 1987.
- Copies of payment vouchers from the IRS dated in February and March 2004 for the 1981, 1983, 1984 and 1985 tax periods.

In response to the Notice of Intent to Deny issued on June 8, 2004, the applicant submitted:

- Documentation from the IRS, which indicated that the applicant had filed his original tax returns for 1981, 1982, 1983, 1984, and 1985 late, specifically on November 12, 2003. The IRS indicated that because the applicant had not filed his returns within three years from its due date, it had to disallow the applicant's claims.
- Documentation from the IRS dated March 22, 2004, regarding taxes owed for 1987.

The AAO does not question the IRS documentation, as it appears that based on the applicant's statement and/or documentation presented to the IRS in 2003, the agency rejected the applicant's claims for 1981 to 1985 and imposed penalties and interests for the tax years of 1986 and 1987. Like a delayed birth certificate, the late filing of the Form 1040s years after the claimed transaction raise serious questions regarding the truth of the facts asserted. *Cf. Matter of Bueno*, 21 I&N Dec. 1029, 1033 (BIA 1997); *Matter of Ma*, 20 I&N Dec. 394 (BIA 1991)(discussing the evidentiary weight accorded to delayed birth certificates in immigrant visa proceedings).

If Citizenship and Immigration Services (CIS) fails to believe that a fact stated in the application is true, CIS may reject that fact. Section 204(b) of the Immigration and Nationality Act, 8 C.S.C. § 1154(b); *see also Anetekhai v.*

INS, 876 F.2d 1218, 1220 (5th Cir. 1989); *Lu-Ann Bakery Shop, Inc. v Nelson*, 705 F. Supp. 7, 10 (D.D.C. 1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

The applicant has not provided any corroborative evidence to substantiate his claimed employment, specifically, a letter from his employer, [REDACTED], attesting to the applicant's employment or the requested printout from the Social Security Administration reflecting his earnings under the social security number used during the period in question.

These factors raise grave questions about the authenticity of the affidavit from [REDACTED] attesting to the applicant's residence in the United States since before January 1, 1982 to January 1984.

The applicant claimed that he has been in the United States since 1980, but only provides an affidavit from one affiant, whose authenticity has been called into question. In addition, the applicant has not provided any credible evidence to establish his residence in the United States from February 1984 to May 4, 1988. The inability to produce contemporaneous documentation of residence raises questions regarding the credibility of the claim.

Given the numerous 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.

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 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).

Section 1104(c)(2)(B) of the LIFE Act states:

- (i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (the Act) that were most recently in effect before the date of the enactment of this Act shall apply.

The record contains a copy of the applicant's Panama passport, which reveals that on July 29, 1985, the applicant was issued a C-1 non-immigrant visa valid until January 29, 1986. The record reflects that the applicant lawfully entered the United States on November 11, 1985.

“Continuous residence” is defined in the regulations at 8 C.F.R. § 245a.15(c)(1), as follows:

Continuous residence. An alien shall be regarded as having resided continuously in the United States if:

- (1) 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. [Emphasis added.]

The record contains a letter dated December 16, 1988 and signed by applicant stating he resided continuously in the United States from October 1980 until July 22, 1985. The applicant further indicated in part:

On July 22, 1985 I interrupted my continuous residence for a period of approximately three and one half months due to the grave illness of my wife and upon the doctor's request that I remain at her bedside until she was fully recovered. On November 11, 1985 I reentered the United States of America with a C-1 visa and have continued my residency.

The record also contains a Form I-690 Application for Waiver of Grounds of Excludability in which the applicant asserted, "I went to visit my critically ill wife and upon the medical doctor's request I was asked to remain for 3 ½ months until she recover." The applicant provided a letter from his wife's doctor along with an English translation, which stated the applicant was at his wife's side from July 22, 1985 until November 10, 1985 at the Paitilla Medical Center during her stay for health affliction.

The fact that the applicant was issued an C-1 non-immigrant in July 29, 1985, based on information that the United States Consulate judged to be credible at the time, is inconsistent with the applicant's current assertion that he was an illegal resident of the United States before 1985. The evidence of record submitted does not establish with reasonable probability that the applicant was already in the United States before January 1, 1982 and that he was in a continuous unlawful status up to his *alleged re-entry* on November 11, 1985. Given this, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

Assuming, *arguendo*, the applicant was in the United States prior to November 11, 1985, the applicant's absence of 112 days from July 22, 1985 through November 11, 1985 exceeded the forty-five day limit for a single absence from the United States during this period, as set forth in 8 C.F.R. § 245a.15(c)(1). Nevertheless, there must be a determination as to whether the applicant's prolonged absence from the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988) holds that *emergent* means "coming unexpectedly into being."

In other words, the reason must be unexpected at the time of departure from the United States and of sufficient magnitude that it made the applicant's return to the United States more than inconvenient, but virtually impossible. In the instant case, that was not the situation as based on the applicant's statement of December 16, 1988, his 112 days absence from the United States was due to his wife's illness. While this suggests that there may have been a valid basis for the applicant's departure from the United States, it also indicates the applicant intended to remain outside of the United States for as long as it took for his wife to recover. Further, the doctor's letter failed to either specifically state the type of health affliction, the treatment the spouse had received or the seriousness of the condition. The applicant's prolonged absences would appear to have been a matter of personal choice, not a situation that was forced upon him by unexpected events.

Thus, it is found that the applicant has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988. Accordingly, the applicant

is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

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