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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
MSC 02 207 62924

Office: CINCINNATI Date: MAY 08 2007

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:



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, Cleveland, Ohio, 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 from before January 1, 1982 through May 4, 1988. The director also denied the application because the applicant had failed to establish that he satisfied the "basic citizenship skills" required under section 1104(c)(2)(E) of the LIFE Act.

On appeal, counsel asserts that the director failed to consider the applicant's testimony at the time of his interview regarding his entry into the United States prior to January 1, 1982, and his continuous presence in the United States.

Under section 1104(c)(2)(E)(i) of the LIFE Act ("Basic Citizenship Skills"), an applicant for permanent resident status must demonstrate that he or she:

- (I) meets the requirements of section 312(a) of the Immigration and Nationality Act (8 U.S.C. 1423(a)) (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States); or
- (II) is satisfactorily pursuing a course of study (recognized by the Attorney General) to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

Under section 1104(c)(2)(E)(ii) of the LIFE Act, the Attorney General may waive all or part of the above requirements for aliens who are at least 65 years of age or developmentally disabled.

The applicant, who was 41 years old at the time he took the basic citizenship skills test and provided no evidence to establish that he was developmentally disabled, does not qualify for either of the exceptions in section 1104(c)(2)(E)(ii) of the LIFE Act. Further the applicant does not satisfy the "basic citizenship skills" requirement of section 1104(c)(2)(E)(i)(I) of the LIFE Act because he does not meet the requirements of section 312(a) of the Immigration and Nationality Act (the Act). An applicant can demonstrate that he or she meets the requirements of section 312(a) of the Act by "[s]peaking and understanding English during the course of the interview for permanent resident status" and answering questions based on the subject matter of approved citizenship training materials, or "[b]y passing a standardized section 312 test . . . by the Legalization Assistance Board with the Educational Testing Service (ETS) or the California State Department of Education with the Comprehensive Adult Student Assessment System (CASAS)." 8 C.F.R. §§ 245a.3(b)(4)(iii)(A)(1) and (2).

The regulation at 8 C.F.R. § 245a.17(b) provides that an applicant who fails to pass the English literacy and/or the United States history and government tests at the time of the interview, shall be afforded a second opportunity after 6 months (or earlier at the request of the applicant) to pass the tests or submit evidence as described in paragraphs (a)(2) or (a)(3) of this section.

The record reflects that the applicant was interviewed twice in connection with his LIFE application, on November 5, 2002, and again on December 6, 2002. On the both occasions, the applicant failed to demonstrate a minimal knowledge of United States history and government

Counsel, on appeal, asserts, in part:

The applicant, however, was not advised that he would be retested on December 6, 2002, nor did the Director provide him with the Citizenship Test questions and answers often given to aliens in preparation for citizenship skill test preparation before their interviews." It is unfair for the Director to find that the applicant failed to demonstrate the citizenship skill without providing him with prior notice of the requirement for the skill and/or the requisite sample test questions and answers knowing that the applicant was not represented by counsel.

Counsel's assertion has no merit as the record clearly reflects that a Form I-72 was issued on November 6, 2002, and sent to the applicant at his address of record, which informed him that he would "be rescheduled for retest on civics. The appointment letter will be mailed to you at a later date." In addition, a Form G-56 dated November 21, 2002 was also sent to the applicant's address of record, which listed the reason for appointment as "rescheduled for retest for LIFE Act application." Further, counsel cites no statute or regulation that compels the director to provide a citizenship skill preparation test prior to an individual's interview, and the record contains a Form G-28, Notice of Entry of Appearance as Attorney or Representative, which reflects that the applicant had representation since March 2, 2001.

However, it must be noted that the director did not wait the required six months in which to afford the applicant the opportunity to retake the civics test. The record does not contain any evidence that either former counsel or the applicant had requested a second interview prior to the six-month period. Accordingly, the AAO will not find that the applicant failed to meet the "basic citizenship skills" requirement of section 1104(c)(2)(E)(i)(I) of the LIFE Act.

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:

- An affidavit dated December 5, 2002, from [REDACTED] of West Sacramento, California, who indicated that he first met the applicant on or before August 1982 at Bharat Bazar, a restaurant/grocery store, in Santa Clara, California. The affiant asserted that he has remained in contact with the applicant since that time.
- A notarized affidavit dated November 20, 2002, from [REDACTED] of Cincinnati, Ohio, who indicated that she first was introduced to the applicant in July 1986 in California. The affiant asserted that she has maintained a friendship with the applicant since that time.
- An affidavit notarized December 3, 2002, from [REDACTED] of Fremont, California, who indicated that he first met the applicant on or before March 1987 at Standard Sweet Restaurant in Santa Clara, California. The affiant asserted that he has remained in contact with the applicant since that time.

The applicant also submitted additional documents, which established his residence and presence in the United States *subsequent to* the requisite period.

On January 5, 2005, the director issued a Notice of Intent to Deny, which advised the applicant that he had failed to submit any evidence establishing he entered the United States prior to January 1, 1982. The applicant was also advised that he was in a legal status based of his entry in June 1982 with a B-2 non-immigrant visa. Counsel, in response, asserted that at the time of his interview, the applicant testified extensively regarding the time and manner of his entry prior to January 1, 1982. Counsel asserted that due to the passage of time and the applicant's unlawful status it is difficult for the applicant to produce documentary evidence. Counsel requested that the director consider the applicant's testimony in conjunction with the documentary evidence already presented.

The record does not support counsel's assertion that the applicant gave extensive testimony regarding his time and manner of entry at the time of his interview. The applicant on his Form I-687 application dated March 2, 2001, did not claim any residence or employment in the United States prior to June 1982. The applicant's significant omission of these facts, coupled with the applicant only providing affidavits from affidavits in support of his claim of residence since August 1982 are strong indications that the applicant's first entry in the United States was as a non-immigrant visitor in June 1982.

In light of the fact that the applicant claims to have continuously resided in the United States since May 1980, this inability to produce supporting affidavits as well as contemporaneous documentation of residence raises questions regarding the credibility of the claim. The applicant has, therefore, failed to establish that he resided in *continuous* unlawful status in the United States from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act. Therefore, the applicant is 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.