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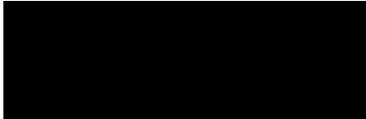
Applicant:



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. 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, Dallas, Texas, 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 failed to establish that she had resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988. This decision was based on the director's conclusion that the applicant had exceeded the forty-five (45) day limit for a single absence as well as the aggregate limit of 180 days for total absences, from the United States during the requisite period.

On appeal, counsel for the applicant asserted that the applicant's brief and casual absence from the United States does not bar him from the benefits under the Immigration Reform and Control Act (IRCA) of 1986. Counsel asserted the applicant provided the necessary documents to demonstrate his continuance presence in the United States, namely his children's school records. Counsel indicated that a brief and/or evidence would be submitted to the AAO within 70 days. However, more than three years later, no additional correspondence has been presented by counsel.

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).

"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. 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.

It is not necessary for the applicant to provide an *emergent reason* for physical presence as the regulation at 8 C.F.R. § 245a.16(b) does not require it. *If* the applicant's absence has exceeded 45 days, his absence will be examined utilizing the standard set forth in 8 C.F.R. § 245a.15(c)(1), and evidence would be required to make a determination whether his prolonged absence from the United States was due to an emergent reason.

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.

The applicant is a class member 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 (the Act) on August 7, 1990. Item 35 of the Form I-687 application requests the applicant to list all absences from the United States since January 1, 1982. The applicant listed two absences to Mexico during March 1981 and from June 1986 to May 1988. The applicant indicated he departed the United States in June 1986 because he did not apply for the amnesty program. Items 33 and 36 of the Form I-687 application, request the applicant to list all residences and employment in the United States since first entry. The applicant listed his residences and employment from August 1981 to June 1986 and from May 1988 to the present. The applicant indicated he was residing in Mexico from June 1986 to May 1988.

The applicant's reason for his departure in June 1986 raises questions of doubt as the application period for filing for the "amnesty" program did not commence until May 5, 1987 and ended on May 4, 1988.

At issue in this proceeding is the documentation submitted by the applicant in an effort to establish continuous residence from June 1986 to May 4, 1988 in the United States. According to the director, in her Notice of Intent to Deny dated October 14, 2003, the applicant had not submitted any evidence to establish he resided in the United States during 1987 and 1988. The applicant was advised that the documents submitted in an attempt to establish continuous residence during the period of his absence only served to establish that his family was residing in the United States.

In response, counsel submitted copies of documents that were previously provided, namely:

- An affidavit notarized February 13, 2003 from [REDACTED] of Denton, Texas, who indicated the applicant and his family rented her property at [REDACTED], Texas from February 1987 to March 1993.
- A letter dated January 29, 2003 from a customer service representative of Wells Fargo Bank in Denton, Texas, who indicated the applicant has been a customer since June 1979 and his account was in good standing.

The record contains a letter dated September 19, 2003 from a customer service representative of Wells Fargo in Denton, Texas addressed to Citizenship and Immigration Services, who indicated the applicant's account was opened on June 1, 1979 at First State Bank of Texas, now doing business as Wells Fargo Bank and that the account remains open and is in good standing.

Although the letters from Wells Fargo Bank indicate the applicant's account has remained open since June 1979, the letters do not serve to establish that the applicant was residing in the United States from the date of his departure in June 1986 through May 4, 1988. Likewise, the school records of the applicant's children only serve to establish that his children were attending school and residing in the United States.

The affidavit from [REDACTED] questions to its authenticity as the applicant clearly indicated on his Form I-687 application that he was not in the United States during 1987 and part of 1988. It is noted that the record contains a Form I-130, Petition for Alien Relative, dated August 29, 2000 and filed on behalf of the applicant on June 25, 2002. Accompanying the Form I-130 is a Form G-325A, Biographic Information, signed and dated by the applicant on August 29, 2000. The applicant indicated on the form that he resided in his native country, Mexico from 1987 to 1988 and was self-employed as a welder in Mexico from 1986 to 1988. The applicant did not claim residence at [REDACTED], Texas until 1989.

The director's determination that the applicant had been absent from the United States for over 45 days was based on the applicant's own statement at the time of his interview and his Form I-687 application.

While not dealt with in the district director's decision, there must, nevertheless, 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. However, in the instant case, that was not the situation. There is no evidence to indicate that an emergent reason delayed the applicant's return to the United States within the 45-day period. In addition, an absence of nearly two years days cannot be considered to be brief and casual. The applicant's prolonged absence would appear to have been a matter of personal choice, not a situation that was forced upon his by unexpected events.

Accordingly, the applicant's June 1986 to May 4, 1988 absence exceeded the 45 day period allowable for a single absence, as well as the 180 day aggregate total for all absences and interrupted his "continuous residence" in the United States.

The applicant has, therefore, failed to establish that he resided in the United States in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required by the statute, section

1104(c)(2)(B)(i) of the LIFE Act, and the regulation, 8 C.F.R. §§ 245a.11(b) and 15(c)(1). Given this, he is ineligible for permanent resident status under section 1104 of the LIFE Act.

Finally, the record contains a FBI report dated January 13, 2004 and two court dispositions reflecting that on or about May 10, 1993, the applicant was convicted in the County Court of Denton Texas of assault-family violence, a Class A misdemeanor, in cause no. [REDACTED]. On September 22, 1981, the applicant pled *nolo contendere* in the County Court of Denton, Texas of driving while intoxicated, a misdemeanor in cause no. 50650. While these convictions do not render the applicant ineligible pursuant to 8 C.F.R. §§ 245a.11(d)(1) and 18(a), the AAO notes that the applicant does have two misdemeanor convictions.

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