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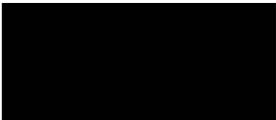
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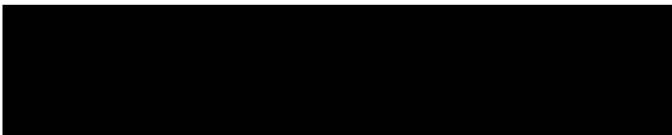
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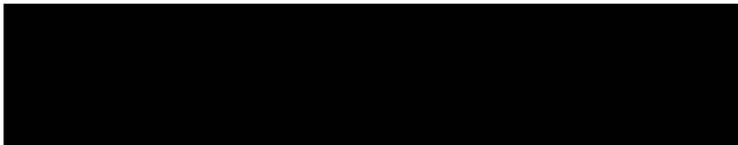
IN RE: Applicant:



APPLICATION:

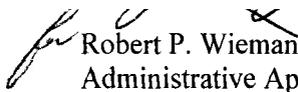
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), *amended by* LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.


Robert P. Wieman
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director (director) in Phoenix, Arizona. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that he maintained continuous residence in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the interviewing officer failed to question the applicant about his absences from the United States during the statutory period and failed to provide the applicant the opportunity to explain any emergent reasons that may have caused him to stay in Mexico for more than the 45-day limit. The applicant does not submit additional evidence on appeal.

To be eligible for adjustment to permanent resident status under the LIFE Act an applicant must establish his or her continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and continuous physical presence in the United States from November 6, 1986 through May 4, 1988. See section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

“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 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 its amenability to verification. See 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).

The applicant, a native and citizen of Mexico, filed his application for permanent resident status under the LIFE Act (Form I-485) on June 7, 2003. In a Notice of Intent to Deny (NOID), issued on September 28, 2006, the director reviewed copies of the applicant’s Form I-687, submitted to the Service in September 1991, affidavits from [REDACTED] and [REDACTED], dated in 1998, stating that they have known the applicant since 1987, an affidavit from [REDACTED], dated in September 1990, stating that he knows that the applicant resided in Baldwin Park, California, from August 1981 through January 1989, that they were roommates in Baldwin Park from 1981 to 1984, and an affidavit from [REDACTED], stating that the applicant worked for him from October 1981 to November 1988, and was paid in cash.

The director cited to the sworn statement submitted by the applicant at his LIFE legalization interview on August 14, 2006, listing his absences from the United States as the following:

- November 1982, through May 1983, to Mexico to visit family;
- August 1986, through January 1986, to Mexico to visit family;
August 1986 through February 1987, to Mexico to visit family and he got married in Mexico in September 1986.

The director also cited to a Form EOIR-42B, Application for Cancellation of Removal and adjustment of Status for Certain Nonpermanent Residents filed by the applicant on July 22, 1998, listing the following departures from and entries into the United States:

- Departure from the United States at San Ysidro Port of Entry on November 1982, to visit family in Mexico, and entered the United States without inspection on May 1983, at San Ysidro Port of Entry;
- Departure from the United States at San Ysidro Port of Entry in August 1985, to visit family in Mexico, and entered without inspection on January 1986, at San Ysidro Port of Entry;
- Departed from the United States at San Ysidro Port of Entry on August 1986, to get married in Mexico, and entered without inspection on January 1987, at San Ysidro Port of Entry.

The director noted that the affidavits were lacking in details, that none of the affiants provided proof of their own identity and presence in the United States during the statutory period, or proof of direct knowledge of the events being attested. The director also noted that the affidavits contradicted information on the EOIR Form-42B and Form G-325A, and the marriage certificate submitted by the applicant. The director concluded that the applicant has failed to establish that he has continuously resided in the United States from before January 1, 1983 through May 4, 1988.

Furthermore, the director noted that the absences from the United States exceeded the 45-day limit for a single absence and the 180-days aggregate limit for all absences. The director noted that the applicant had not demonstrated there was any emergent reason precluding his returns to the United States within the 45-day limit, and concluded that the absences broke the applicant's continuous residence in the United States. The applicant was provided 30 days to respond.

In response, counsel asserted that the applicant was never interviewed regarding his absences from the United States, that the interviewing officer merely informed the applicant that his absences exceed the 45-day limit and asked him to withdraw his application, and that the applicant was never provided the opportunity to explain if any emergent reasons caused him not to return to the United States within 45 days. The applicant did not submit any additional document in support of his claim.

On February 16, 2007, the director, after reviewing the documents submitted by the applicant and the record of proceedings, denied the application, finding that the evidence in the record is insufficient to overcome the grounds for denial discussed in the NOID. The director noted that the departures attested to by the applicant on his application for Cancellation of Removal submitted to the court while in removal proceedings on July 22, 1998, and the statement of absences submitted by the applicant at his LIFE interview on August 14, 2006 - from November 1982 to May 1983, August 1985 to January 1985, and August 1986 to February 1987- exceeded 45 days for each absence and the aggregate of all absences exceeded 180 days. The director concluded that the evidence in the record was insufficient to establish that the applicant resided continuously in the United States in an unlawful status during the requisite period, and therefore failed to meet his burden of proof to adjust status under the LIFE Act.

On appeal, counsel claims that the applicant was not interviewed regarding the physical presence requirement of the LIFE Act, and requested another interview so that the applicant can have the opportunity to provide evidence that emergent reasons temporarily delayed his returns to the United States. Neither the applicant nor counsel submitted any additional document with the appeal.

The only evidence provided by the applicant of his residence in the United States from before January 1, 1982 are affidavits from [REDACTED], dated July 8, 1990, from [REDACTED] and [REDACTED], dated September 4, 1990, from [REDACTED], dated September 6, 1990,

and from [REDACTED] dated September 8, 1990, all stating that they had personal knowledge that the applicant has continuously resided in the United States since 1981. The affidavits have minimalist or fill-in-the-blank format with little input from the affiants. While they all claim to have known the applicant since 1981, the affiants provided no information about his life in the United States and their interaction with him over the years. Nor are the affidavits accompanied by any documentary evidence from the affiants – such as photographs, letters, and the like – of their personal relationship with the applicant in the United States during the 1980s.

In view of these substantive shortcomings, the AAO finds that the affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

The file includes an Application for Asylum and Withholding of Removal (Form I-589) the applicant filed on January 27, 1997, stating that he last arrived in the United States on January 1, 1987. At his asylum interview on September 6, 1997, the applicant testified that he first came to the United States in August 1981, that he made frequent trips from the United States to Mexico between August 1981 and December 1987, lasting from one month to several months. On his statement accompanying the application, the applicant stated that he entered the United States in January 1988. The applicant did not state any prior entry or residence in the United States. Also, on his Form I-687 filed in 1991, the applicant listed only one absence from the United States in December 1987, returning in the same month.

The information on these documents is contrary to the information on the affidavits submitted by the applicant attesting that the applicant has continuously resided in the United States since 1981. The inconsistencies noted above undermine the applicant's claim of continuous residence in the United States from before January 1, 1982 through May 4, 1988.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the claim. *See id.*

On the EOIR Form-42B the applicant submitted on July 22, 1998, the applicant stated that he traveled from the United States to Mexico on three separate occasions - from November 1982 to May 1983, from August 1985 to January 1986 and from August 1986 to January 1987. Consistent with the EOIR Form-42B, the applicant testified at his LIFE legalization interview on August 14, 2006, that he traveled from the United States to Mexico on these dates, from November 1982 to May 1983, from August 1985 to January 1986, and from August 1986 to February 1987. On the EOIR Form-42B as well as on Form G-325A the applicant stated that he was married in Colima, Mexico on September 19, 1986. However, the information on the marriage certificate in the record indicated that the applicant was married in Colima, Mexico on

July 7, 1988, and a certified copy of the marriage certificate was issued upon request on September 19, 1988. This information calls into question how long the applicant's trip to Mexico on August 1986 lasted.

According to his own testimony, and information he furnished on the EOIR Form-42B, each of the applicant's absences exceeded the 45-day maximum for a single absence and the aggregate of all the three absences far exceeded the 180-day maximum prescribed in the regulation at 8 C.F.R. § 245a.15(c)(1). Absences of such duration interrupt an alien's continuous residence in the United States unless (s)he can show that a timely return to the United States could not be accomplished due to emergent reasons. While the term "emergent reasons" is not defined in the regulations, there is some pertinent case law. In *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), the Board of Immigration Appeals held that *emergent* means "coming unexpectedly into being."

According to the applicant's own statement, he left the United States for Mexico the first and second time to visit his family and the last time to get married. The applicant has provided no reasons why he could not have returned to the United States within 45 days. Nor has he explained what sort of "emergent reasons" prevented his return to the United States within 45 days.

In the NOID and on appeal, the applicant was given the opportunity to provide written explanation or documentary evidence of emergent reasons that prevented his return to the United States within 45 days following each visit, but he failed to do so.

Based on the evidence in the record, the AAO concludes that the applicant has failed to establish that emergent reasons, within the meaning of 8 C.F.R. § 245a.15(c)(1), prevented his return to the United States from Mexico in November 1982 and August 1985 within the 45-day period allowed in the regulation. Nor has the applicant provided evidence to establish that his absence from the United States in August 1986 did not exceed the 180-days aggregate maximum.

Thus, the evidence in the record is insufficient to establish that the applicant has resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A). Accordingly, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

The appeal will be dismissed, and the application denied.

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