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U.S. Citizenship
and Immigration
Services

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FILE:



Office: MEMPHIS

Date:

DEC 01 2008

MSC 03 226 60276

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.

John F. Grissom, Acting Chief
Administrative Appeals Office

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

The director denied the application because the applicant failed to establish that he resided continuously in the United States from before January 1, 1982 through May 4, 1988.

On appeal counsel asserts that the applicant has submitted sufficient documentation to establish that he entered the United States prior to January 1, 1982 and resided continuously in the country in an unlawful status through May 4, 1988.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their 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.” (Emphases added.)

“Continuous physical presence” is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: “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.” (Emphasis added.) The regulation further explains that “[b]rief, 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.” (Emphasis added.) 8 C.F.R. § 245a.16(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 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 regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant’s employment must: provide the applicant’s address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant’s duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The applicant, a native of Mexico who claims to have resided in the United States since June 1981, filed his Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act on May 14, 2003.

On March 8, 2006, the applicant was interviewed for LIFE legalization. He demonstrated a basic knowledge of U.S. history and government but failed to demonstrate a basic understanding of ordinary English during the examination portion of the interview. Thus, the applicant did not meet the “basic citizenship skills” requirement of LIFE legalization set forth under Section 1104(c)(2)(E)(i) of the LIFE Act.

In a Notice of Intent to Deny (NOID) dated April 22, 2006, the director cited the applicant’s inability “to demonstrate a simple command of the English language” and his failure to establish that he entered the United States before January 1, 1982, and maintained continuous presence in the country through May 4, 1988. The applicant was granted 30 days to provide additional evidence or rebuttal information.

The applicant filed a timely response to the NOID, in which counsel asserted that the applicant is illiterate and unable to read and write his native language of Spanish, much less the English language. Counsel further asserted that the documentation in the record was sufficient to

establish that the applicant resided in the United States continuously from before January 1, 1982 through May 4, 1988. No additional documentation was submitted.

On June 26, 2006, the director issued a Notice of Decision denying the application. The director stated that the information provided in response to the NOID was insufficient to establish that the applicant entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status through May 4, 1988.¹

On appeal counsel asserts that the documentation submitted by the applicant is sufficient to establish that he resided continuously in the United States during the requisite period for adjustment of status under the LIFE Act.

The documentation that the applicant submits in support of his claim that he arrived in the United States before January 1, 1982 and resided continuously in an unlawful status during the requisite period consists of affidavits and letters from friends and acquaintances dated in 1990 and 2003. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision.

The affidavits and letters from

– all of who claim to have worked with, rented an apartment to, or otherwise known the applicant during the 1980s – have minimalist or fill-in-the-blank formats with little personal input by the authors. Considering the length of time they claim to have known the applicant, the authors provide remarkably little information about his life in the United States and their interaction with him over the years. A number of the individuals indicate that they did not know the applicant before the mid-1980s. Nor are the affidavits and letters accompanied by any documentary evidence – such as photographs, letters, and the like – of the personal relationship between the authors and the applicant in the United States during the 1980s. In view of these substantive shortcomings, the affidavits and letters 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.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that he entered the United States before January 1, 1982 and 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 the LIFE Act.

The appeal will be dismissed, and the application denied.

¹ The director made no finding on the issue of the applicant's "basic citizenship skills." Since the applicant was never given a second opportunity to pass a test of his basic English language ability, as required by the regulation at 8 C.F.R. § 245A.17(b), no decision was possible on this issue.

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