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U.S. Citizenship
and Immigration
Services

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FILE:



MSC 02 253 60799

Office: LAS VEGAS

Date: **DEC 31 2008**

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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: On August 11, 2007, the Director, Las Vegas, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application, finding that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director noted that the applicant had an opportunity to submit documents relating to his continuous residence from the requisite period when he filed his LIFE Act application in 2002 and with his Legalization application, which he filed in the 1990's. The director noted that the destruction of the applicant's home in 2004 by fire did not explain why the applicant failed to submit these documents prior to the fire. To verify the applicant's claim that he attended St. Gertrude Church from 1982 through 2003, the director spoke with the church secretary and was told that church records indicated that the priest who wrote the letter no longer worked at the church and could not have first hand knowledge of the applicant's attendance at that church during the stated time because the priest would have been a teenager at that time. The church secretary stated that the applicant did not begin attending the parish until 1992 and that he did not become a registered member of the church until June 25, 1998. Finally, the director tried to verify the applicant's employment with [REDACTED] and was told by [REDACTED] that he did not recognize the applicant's name, that he kept no records during the stated employment period, and that if the applicant had worked for him for several years that he would remember him.

On appeal, the applicant asserts that a fire department report regarding his house fire was legally documented, that not all documents were destroyed in the fire, and that calling into question the veracity of the fire is reprehensible. He asserts that he is a lifelong Catholic and that he attends church faithfully. He states that priests come and go and that despite what church records show, he has been attending regularly. The applicant suggests that he be polygraphed. The applicant asserts that the information in the letter from [REDACTED] is correct. He asserts that [REDACTED] also verified his presence and that he worked with several people but could not locate all of them. He asserts that he came to the United States in 1981.

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence 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. See 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. 245a.11(b). The applicant 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 or 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony. 8 C.F.R. 245a.12(f). Affidavits that indicate specific, personal knowledge of the applicant’s whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits that provide generic information.

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.

A LIFE Legalization applicant must also provide evidence establishing that, before October 1, 2000, he or she was a class member applicant in a legalization class-action lawsuit. *See* 8 C.F.R. 245a.14. In this case, the record reflects that the applicant applied for such class membership by submitting a “Form for Determination of Class Membership in *CSS v. Meese* [*CSS lawsuit*],” accompanied by a Form I-687 “Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act).”

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden and establish by a preponderance of the evidence, that his claim of entry into the United States before January 1, 1982, and continuous residence in the United States during the requisite period is probably true.

On June 10, 2002, the applicant submitted the current Form I-485, Application to Register Permanent Residence or Adjust Status. On August 21, 2006, the applicant appeared for an interview based on the application.

The documentation that the applicant submits in support of his claim consists of two employment verification letters, a church letter, and two affidavits.

The affidavits from [REDACTED] can be given minimal weight as evidence of the applicant's required continuous residence as they contain minimal details regarding any relationship with the applicant during the requisite period. Although the affiants assert that the applicant came to the United States in 1981, they fail to indicate any personal knowledge of the applicant's claimed entry to the United States during that year. While they assert that they have seen the applicant regularly since 1981, the affiants also fail to provide sufficient relevant details regarding the circumstances of the applicant's residence during the statutory period. Lacking such relevant detail, the statements can be afforded only minimal weight as evidence of the applicant's continuous residence in the United States for the requisite period.

The employment verification letters from [REDACTED] Contracting and [REDACTED] can be given minimal evidentiary weight as they fail to comply with the regulatory requirements at 8 C.F.R. § 245a.2(d)(3)(i). Specifically the employers do not provide the applicant's address at the time of employment, show periods of layoff, or declare whether the information was taken from company records, or 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. In addition, the information in the letter from [REDACTED] Contracting contradicted what [REDACTED] himself stated when he was contacted as he denied knowing the applicant at all. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant's explanation that [REDACTED] is not telling the truth is not sufficient to explain the inconsistency and the applicant has not submitted documentary evidence such as tax records or pay stubs to point to where the truth lies, i.e., whether he worked for [REDACTED] when he says he did.

The letter from the applicant's church can be given minimal weight as evidence of his continuous residence it does not provide basic information that is expressly required by 8 C.F.R. 245a.2(d)(3)(i). Specifically, the letter does not explain the origin of the information given and does not provide the address where the applicant resided during the period of his involvement with the church. Instead, the letter refers generically to the church's "records" and provides the applicant's address at the time the letter is dated, not his address during the statutory period. Furthermore, the letter does not provide a specific date when the applicant first began attending the church or the frequency with which he attended. Given this lack of detail, the letter can be given minimal weight as evidence of the applicant's continuous residence or physical presence in the United States during the requisite period. Furthermore, the church's records contradict the information contained in the letter. Specifically, church records appear to indicate that the applicant did not begin attending the parish until 1992 and that he did not become a registered member of the church until June 25, 1998. *Ibid*. The applicant's explanation that priests come and go and that despite what church records show, he has been attending regularly is not sufficient to explain the inconsistency. The applicant has not submitted any documentary

evidence to point to where the truth lies, i.e., whether he attended the church when he says he did.

Although the applicant has submitted several letters and affidavits in support of his application, he has not provided any contemporaneous evidence of residence in the United States during the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have first entered the United States without inspection on January 21, 1981, and to have resided for the duration of the requisite period in California. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has failed to do so. In this case, his assertions regarding his entry are not supported by any credible evidence in the record.

Having examined each piece of evidence, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has not shown by a preponderance of the evidence he entered into the United States before January 1, 1982, and that the resided continuously in an unlawful status for the requisite period.

Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon documents with minimal probative value, the applicant has failed to establish continuous residence in an unlawful status in the United States for the requisite period, as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, he is ineligible for permanent resident status under Section 1104 of the LIFE Act.

ORDER: The director's decision is affirmed. This decision constitutes a final notice of ineligibility.