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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 02 192 60195

Office: HOUSTON, TEXAS

Date:

JAN 02 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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the late legalization provisions of 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 determined that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act. The director specified that information in the record indicated that the applicant had not entered the United States until after January 1, 1982. The director also indicated that the applicant failed to provide sufficient, credible evidence that he was continuously present in the United States during the statutory period.

On appeal, the applicant asserts that he did maintain continuous unlawful residence in the United States during the statutory period.

An applicant for permanent resident status under section 1104 of the LIFE Act 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 through May 4, 1988. *See* LIFE Act § 1104(c)(2)(B) and 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 states 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 petitioner 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 petitioner 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 or petition.

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.

The record indicates that on or near December 11, 1995, the applicant applied for class membership in a legalization class-action lawsuit and filed Form I-687, Application for Status as a Temporary Resident. On April 10, 2002, the applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

The record contains the following documents relating to the applicant's claim that he resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988:

1. A letter written by the applicant and dated December 11, 1997. The letter is addressed to President Bill Clinton and Attorney General Janet Reno. In the letter, the applicant indicated that he first entered the United States during 1985. He specified that in 1997 when he wrote this letter he had been in the United States for *almost* twelve years. He requested that he be allowed to acquire lawful resident status under the late legalization program.
2. The Form for Determination of Class Membership in *INS v. Meese* which was signed by the applicant under penalty of perjury on December 11, 1995. At Item #7, the applicant stated that he had not resided continuously in the United States in an unlawful status since some date prior to January 1, 1982. At Item #6, the applicant stated that he first entered the United States on March 12, 1985.
3. The Form I-687, Application for Status as a Temporary Resident, which the applicant signed under penalty of perjury on September 27, 1995. At Item #33 of this form where the applicant was to list all of his residences since his first entry into the United States, he indicated that he first began residing in the United States during March 1985.
4. The notarized affidavit of [REDACTED] of Galena Park, Texas dated March 13, 2002 in which the affiant attested to having met the applicant during February 1980. The affiant indicated that he met the applicant at an unspecified company where both of them worked during 1980. The affiant did not indicate in what country that company is located. The affiant did indicate whether he has always lived in the United States. The affiant indicated that he currently sees the applicant approximately once a month as the two of them live in the same town.
5. The notarized affidavit of [REDACTED] of Houston, Texas dated July 15, 2003 in which the affiant attested to having met the applicant in 1975. The affiant did not indicate in what country he met the applicant. The affiant indicated that he and the applicant remain friends who visit each other often.
6. The notarized affidavit of [REDACTED] of Galena Park, Texas dated July 15, 2003 in which the affiant attested to having worked at the same company as the applicant from March 1979 through May 1983. The affiant did not state in what country this company is located. The affiant stated that he and the applicant are both from the same town in Mexico. He also indicated that the two of them see each other often and that they lived together in Galena Park, Texas.

7. The notarized affidavit of [REDACTED] of Galena Park, Texas dated July 15, 2003 in which the affiant attested to having worked at the same company as the applicant from March 1979 through May 1983. The affiant did not state in what country this company is located. The affiant stated that he and the applicant are from the same town in Mexico. He also indicated that the two of them see each other often and that they lived together in Galena Park, Texas.
8. The notarized affidavit of [REDACTED] of Galena Park, Texas dated May 7, 2003 in which the affiant attested to having been acquainted with the applicant in the United States since May 1980 while the two of them were employed at the same company. The affiant did not indicate where this company is located.
9. The notarized affidavit of [REDACTED] of Galena Park, Texas dated July 15, 2003 in which the affiant attested to having lived at the same address in Culver City, California as the applicant from March 1985 through May 1990. The affiant also explained that because he comes from the same town in Mexico as the applicant, at the time of signing this affidavit, the affiant had known the applicant for almost twenty years.
10. The notarized affidavit of [REDACTED] of an unspecified city dated June 11, 2003 in which the affiant attested to having lived with the applicant at the following addresses: [REDACTED], Houston, Texas from April 1980 through May 1983; and [REDACTED], Houston, Texas from June 1983 through March 1985. The affiant provided no contact information other than a copy of his Mexican identification card issued in 1989 that lists the affiant's address as the address which the affiant claimed to have moved away from during May 1983: [REDACTED], Houston, Texas.
11. A copy of an identification card for the applicant which lists the applicant's address as [REDACTED], Houston, Texas, and which states that this card would expire on the applicant's birth date in 1984. There is no indication on the card as to when it was issued.

The applicant also submitted other documents that attest to his presence in the United States outside the statutory period. This evidence is not relevant to his claim.

On January 3, 2005, the district director issued a Notice of Intent to Deny (NOID). He stated that documents in the record such as the copy of the applicant's letter written to President Bill Clinton and Attorney General Janet Reno as well as the copy of the applicant's form relating to class membership indicate that the applicant did not enter the United States and begin residing in this country until after January 1, 1982. He also indicated that the affidavits submitted into the record to substantiate the applicant's continuous residence in the United States during the statutory period contain statements that are not consistent with other documents in the record. The director noted that the evidence of record did not establish that the applicant had resided continuously in the United States in unlawful status during the statutory period.

In his January 13, 2005 response, the applicant submitted a copy of the identification card described above as well as several of the affidavits described above.

On January 29, 2005, the director denied the application. The director pointed out that in the evidence of record were documents which contained statements that were not consistent regarding the applicant's claim that he resided continuously in the United States in unlawful status during the statutory period. The director concluded that the applicant had not established that he resided continuously in the United States in unlawful status from a date prior to January 1, 1982 through May 4, 1988.

On appeal, the applicant indicated that he did maintain continuous unlawful residence in the United States throughout the statutory period.

The AAO maintains plenary power to review this matter on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The federal courts have long recognized the AAO's *de novo* review authority. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted on appeal.¹

First, the applicant acknowledged on the Form for Determination of Class Membership in *INS v. Meese*, which he signed under penalty of perjury on December 11, 1995, that he did not reside continuously in the United States in unlawful status from a date prior to January 1, 1982, and that he first entered the United States during 1985. Similarly, on the Form I-687, which he signed under penalty of perjury on September 27, 1995, he indicated that he did not begin residing in the United States until March 1985. Finally, in the letter which the applicant wrote to President Bill Clinton and Attorney General Janet Reno dated December 11, 1997, he acknowledged that he did not begin residing in the United States until 1985, and that by 1997 he had only resided in the United States for approximately twelve years. These documents cast considerable doubt on the applicant's claim that he resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988.

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

Other than an identification card which expired in 1984 and which does not include an issue date, the applicant failed to provide any contemporaneous evidence that might be considered independent, objective evidence of his having resided in the United States during the statutory period. This document does not establish that the applicant resided in the United States from a date prior to January 1, 1982 and throughout the statutory period.

This office also finds that the various affidavits in the record which purport to substantiate the applicant's continuous residence in the United States just before and during the statutory period are not objective, independent evidence such that they might overcome inconsistencies in the record regarding the applicant's

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in this case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

claim that he maintained a continuous unlawful residence in the United States from a date prior to January 1, 1982 through May 4, 1988, and that these affidavits do not have probative value in this matter.

There is no other evidence in the record to support the applicant's claim that he entered the United States prior to January 1, 1982 and that he maintained continuance residence in this country in unlawful status throughout the statutory period.

The applicant has failed to establish continuous residence in an unlawful status in the United States from some date prior to January 1, 1982 and through May 4, 1988. Thus, the applicant is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

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