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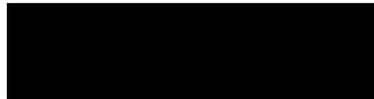


FILE: MSC 002 193 60401

Office: NEW YORK

Date: JUN 30 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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. 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.

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, New York, 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. This decision was based on the district director's conclusion that the applicant had submitted questionable evidence, and had exceeded the forty-five (45) day limit for a single absence from the United States during this period, as set forth in 8 C.F.R. § 245a.15(c)(1)(i).

On appeal, counsel for the applicant states that the director erred in denying the application because the applicant has submitted sufficient evidence to establish that he has resided continuously in the United States from prior to January 1, 1982 through May 4, 1988. Counsel does not submit additional evidence on appeal.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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.

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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period. The applicant submitted letters, affidavits, and other documents as evidence to support his Form I-485 application. Here, the submitted evidence is not relevant, probative, and credible.

In the Notice of Intent to Deny (NOID), dated March 30, 2006, the director stated that the applicant failed to submit sufficient evidence demonstrating that he entered the United States before January 1, 1982, and his continuous unlawful residence and his physical presence in the United States, during the requisite period. The director noted that the applicant testified that he first entered the United States in August 1981, without inspection, he departed the United States in June 1985 for Pakistan, obtained a B-1 visa in Karachi, Pakistan, and re-entered the United States at JFK International Airport, New York, in December 1985. The director also noted that the applicant had submitted evidence, in the form of a hospital receipt and a purchase receipt, that appeared fraudulent in support of his application. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated May 27, 2006 the director denied the instant application based on the reasons stated in the NOID. The director noted that the applicant responded to the NOID and submitted additional evidence in the form of affidavits, but failed to address the issue of submitting fraudulent documents to establish continuous residence for the requisite period.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish that before October 1, 2000, he or she filed a written claim with the Attorney General for class membership in one of the following legalization class-action lawsuits: *Catholic Social Services, Inc. v. Meese*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) ("CSS"), *League of United Latin American Citizens v. INS*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) ("LULAC"), or *Zambrano v. INS*, vacated sub nom. *Immigration and Naturalization Service v. Zambrano*, 509 U.S. 918 (1993) ("Zambrano"). See section 1104(b) of the LIFE Act and 8 C.F.R. § 245a.10.

The regulations provide an illustrative list of documents that an applicant may submit to establish that he or she filed a written claim for class membership before October 1, 2000. Those regulations also permit the submission of "[a]ny other relevant document(s)." See 8 C.F.R. § 245a.14.

To be eligible for adjustment to permanent resident status under the LIFE Act, however, the applicant must also establish his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and his continuous physical presence in the United States from November 6, 1986 through May 4, 1988. The pertinent statutory provisions read as follows:

**Section 1104(c)(2)(B)(i).** In general – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act that were most recently in effect before the date of the enactment of this Act shall apply.

“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.

The director’s determination that the applicant had exceeded the forty-five (45) day limit for a single absence from the United States was based on the applicant’s own statement sworn to on February 16, 2006, in the presence of an officer of Citizenship and Immigration Services (CIS). In his statement, the applicant indicated that he first entered the United States through Canada in August 1981, without inspection, departed the United States for Pakistan, in June 1985, was issued a visitor’s visa by the United States Embassy in Karachi, in December 1985, and re-entered the United States at JFK International Airport in December 1985, as a B-1 visitor. Based on the record, by the applicant’s own testimony, he was outside the United States beyond the period of time allowed by regulation.

In the absence of additional evidence from the applicant, it is determined that the absence in 1987 exceeded the 45 day period allowable for a single absence. In the NOID, the district director indicated that the applicant did not indicate whether his prolonged absence from the U.S. 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.”

Contrary to counsel’s assertion, the applicant has failed to submit any independent, corroborative, contemporaneous evidence to rebut the content and substance of the statement he provided to the Service on February 16, 2006. The applicant has failed to provide a valid reason that necessitated a single absence from the United States beyond 45 days. In the absence of evidence that the applicant intended to return within 45 days, it cannot be concluded that an emergent reason “which came

suddenly into being” delayed or prevented the applicant’s return to the United States beyond the 45-day period.

In addition, the record reflects that the applicant submitted questionable evidence in support of his application. Specifically, it is noted that the applicant provided:

1. A Queens Hospital, located in Queens, New York, Emergency Department Patient Discharge Instructions, dated February 18, 1983, with telephone number (718) 334-3054; and,
2. A receipt for automotive repairs from Plaza Auto Mall, dated June 15, 1985.

Specifically, the Queens Hospital receipt is dated in February 1983 and bears a 718 area code telephone number, however, the 718 area code was not created for the hospital until September 1984. Also, the receipt for automotive repairs indicates that the repairs were performed on June 15, 1985; however, the receipt form indicates that the form was printed in November 2004.

It is noted that in the NOID the director requested that the applicant address these discrepancies in the record. However, although the applicant submitted additional documents in response to the NOID, counsel did not address any of the discrepancies in his response, or on appeal. This casts doubts on whether the applicant has been in the United States since August 1982 as he claims. 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status during the requisite period.

The applicant also made a sworn statement that he departed the United States and traveled to Pakistan in June 1985 and returned in December 1985, with a non-immigrant visa. It is noted that in order to receive such a visa, the applicant had to convince a U.S. consular official that he resided and worked in Pakistan. Therefore, the applicant cannot establish that he resided in the United States in an unlawful status since January 1, 1982 through May 4, 1988.

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