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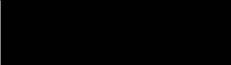
U.S. Citizenship
and Immigration
Services

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FILE:



MSC 02 121 61786

Office: HOUSTON, TEXAS

Date:

MAR 21 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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits [or Records] 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.

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

for 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 in Houston, Texas. 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 demonstrate that he entered the United States before January 1, 1982, and resided in the United States in a continuous unlawful status from then through May 4, 1988.

On appeal, the applicant asserts that he came to the United States in May 1981 and, except for a few brief absences from the country, has resided here ever since.

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.”

“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.” 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.” 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, filed his application for permanent resident status under the LIFE Act (Form I-485) on January 29, 2002. In a Notice of Intent to Deny (NOID), dated January 28, 2005, the director noted the inconsistency between the applicant’s testimony at his LIFE legalization interview on September 10, 2003, and his earlier sworn statement at an interview in connection with his application for class membership in the *CSS v. Meese* litigation on September 23, 1991, in regard to his initial date of entry into the United States and his subsequent absence(s) from the country. Whereas the applicant testified in 2003 that he initially entered the United States in 1981 and had short-term absences from the country on visits to Mexico in the summer of 1987, the spring of 1988, and the winter of 1989, culminating in a return to the United States with a B-2 visa in February 1989, the applicant’s sworn statement in 1991 indicated an initial entry into the United States in August 1986 and just one absence from the country – a visit to Mexico from August 14 to September 5, 1987 – during the next five years. The director also noted the lack of primary evidence demonstrating the applicant’s entry into the United States before January 1, 1982, that the affidavits submitted from acquaintances had uniform fill-in-the-blank formats and had not been completed in the presence of the notary public whose signature and seal appear thereon, and that some of the receipts in the record did not contain the applicant’s name. “Due to the notable discrepancies in your verbal testimony, sworn statements, and the documents you submitted,” the director concluded, the applicant had not established his entry into the United States before January 1, 1982, and his continuous

residence in the United States in an unlawful status from then through May 4, 1988, as required for adjustment to permanent resident status under the LIFE Act. The director granted the applicant 30 days to submit additional evidence.

In his response to the NOID the applicant reiterated the claim made at his LIFE legalization interview in 2003 that he initially entered the United States in May 1981, and he acknowledged one additional departure from the country, to Mexico, in August 1986. The interview memorandum (Form I-648) prepared by the LIFE legalization interviewing officer in 2003 records the applicant as asserting that he was very nervous at the time of his earlier interview for CSS class membership in 1991 and did not tell that interviewing officer that he first entered the United States in 1986. The applicant indicated at his LIFE legalization interview in 2003, as well as in his response to the NOID, that he did not have any further documentation from the 1980s to demonstrate his residence in the United States during those years.

On March 16, 2005, the director denied the application, stating that the applicant had not overcome the grounds for denial as detailed in the NOID and therefore failed to establish his continuous residence in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal the applicant reiterates his contention that he entered the United States in May 1981; left the country on three short visits to Mexico in August 1986, August 1987, and March 1988, each less than one month in length, which did not interrupt his continuous unlawful residence in the United States for the requisite time period up to May 4, 1988; and has continued to reside in the United States with his family up to the present time. The applicant requests that his documentation be reviewed again. No additional evidence has been submitted on appeal.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish that he entered the United States before January 1, 1982, and resided in the United States continuously thereafter in an unlawful status through May 4, 1988. The AAO determines that he has not.

Even if the AAO were to accept, *arguendo*, that the applicant was perhaps misunderstood at his initial interview in September 1991, and that the interviewing officer mistakenly recorded the applicant on the interview memorandum as stating that he first entered the United States in August 1986 (rather than in May 1981) – the AAO concurs with the director that the documentation of record is insufficient to establish the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988. With respect to the various receipts and related documents in the record, many do not have the applicant's name on them and others are undated. The receipts that do have the applicant's name on them are all dated 1991 or later. As for the affidavits in the record, all of which are dated in September 1991, the applicant has acknowledged that they were improperly signed outside the notary's presence, which reduces their evidentiary weight. Furthermore, they were all identical fill-in-the-blank formats containing very little information from the individual affiants about the applicant and

their relationship to him over the years. With the exception of one affiant who claims to have lived with the applicant during the 1980s, none of the affiants identified any address(es) for the applicant during those years. Moreover, the affiant who claims to have lived with the applicant since 1981 provided no address for the years 1981 to 1986 (the time period acknowledged by the applicant at his 1991 interview, according to the memorandum in the record, as being before his initial entry into the United States). Lastly, none of the affidavits are supported by any documentary evidence of the affiants' own identities and presence in the United States during the 1980s.

As previously indicated, evidence must be evaluated not only by its quantity, but also by its quality. Based on the foregoing analysis, the AAO determines that the applicant has failed to establish that he entered the United States unlawfully before January 1, 1982, and resided in the United States continuously thereafter in an unlawful status 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.

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