



U.S. Citizenship  
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FILE: [REDACTED]  
MSC 02 008 61676

Office: LOS ANGELES

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.

  
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 Los Angeles, California. 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 has submitted sufficient evidence to establish his eligibility for LIFE legalization.

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 October 8, 2001. In a Notice of Intent to Deny (NOID), dated December 13, 2005, the director noted the inconsistency in the applicant’s testimony at his LIFE legalization interview on January 6, 2005, and an earlier interview in connection with his application for class membership in the CSS/LULAC litigation on September 7, 1995, with respect to his initial date of entry into the United States and his subsequent absence(s) from the country. The director also indicated that the letters submitted as evidence of the applicant’s residence in the United States did not attest to the applicant’s presence in the country before 1982, and that the purchase receipts submitted as additional evidence of the applicant’s residence in the United States during the 1980s appeared to be fraudulent. The director concluded that the evidence of record did not establish the applicant’s entry into the United States before January 1, 1982, or his continuous residence in the United States in an unlawful status from then through May 4, 1988, as required for him to be eligible for permanent resident status under the LIFE Act. The director granted the applicant 30 days to submit additional evidence.

In response to the NOID the applicant asserted that the testimony he provided in his second interview – for LIFE legalization – was correct. In that interview the applicant asserted that he entered the United States in July 1981 and remained in the country continuously thereafter except for an 18-day trip to Mexico to visit his ailing mother from October 2 to 20, 1987.

According to the applicant, at his first interview in 1995 the interviewing officer did not speak Spanish that well and the applicant got confused, which may have led to mistaken answers to the questions. (According to the interviewer, the applicant stated that after his initial entry into the United States in 1982, he left the country in January 1983 and did not return until December 1987.) The applicant asserted that he did not recall stating that he first entered the United States in October 1982, and reiterated his contention that his initial entry was in July 1981. The applicant requested that the director inspect the documents he had submitted more closely to establish their validity.

On January 18, 2006, the director denied the application, stating that the applicant had failed to overcome the grounds for denial as detailed in the NOID.

On appeal the applicant reiterates his contention that the documents he submitted, including the affidavits, establish his continuous residence in the United States for the requisite time period of 1981 to 1988. The applicant asserts that he was under duress in his earlier interview and that the information recorded by the interviewing officer should be disregarded. 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.

With respect to the conflicting information at his first and second interviews, the AAO notes that the information provided by the applicant at his LIFE legalization interview in 2005 accords with the information he provided on the Form I-687, Application for Status as a Temporary Resident, which he prepared on November 12, 1993, in conjunction with his Form for Determination of Class Membership in *CSS v. Meese*. On both of those forms the applicant stated that he first entered the United States in July 1981 and that his only absence from the country since then was an emergency trip to Mexico from October 2 to 20, 1987. Since this was the same information provided by the applicant at his LIFE legalization interview on January 7, 2005, it seems possible that the applicant was misunderstood at his prior interview on September 7, 1995, in connection with his application for class membership in the *CSS/LULAC* litigation.

Even so, the AAO concurs with the director that the evidence of record does not establish the applicant's continuous residence in the United States for the requisite time period for legalization under the LIFE Act. The five letters submitted by acquaintances of the applicant as evidence of his residence in the United States, all of which appear to have been written in 1995, contain very little information about the applicant and the authors' relationship to him over the years. They are not supported by any documentary evidence of the authors' own identity and presence in the United States during the 1980s. Moreover, none of the authors claims to have known the applicant before January 1, 1982. As for the various purchase receipts in the record, spanning the years 1981 to 1988, some of them do not identify any customer by name while others contain

the applicant's name in handwriting that clearly does not comport with the handwriting on the rest of the document. The AAO agrees with the director that the receipts do not appear to be authentic records of the applicant and are not credible evidence of the applicant's residence or presence in the United States during the years 1981-1988.

Thus, 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.