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U.S. Citizenship
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FILE:



Office: HOUSTON, TEXAS

Date:

MAR 28 2008

MSC 01 304 60121

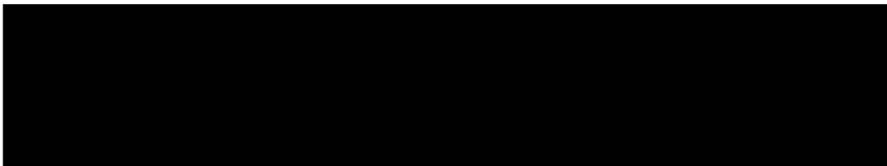
IN RE: Applicant:



APPLICATION:

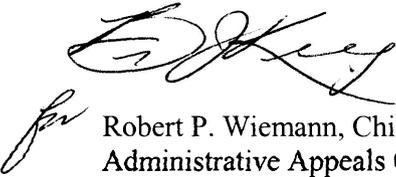
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. 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 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 continuously in the United States in an unlawful status from then through May 4, 1988.

On appeal, counsel asserts that the applicant entered the United States in 1981 and thereafter resided continuously in the United States in an unlawful status through May 4, 1988, with several brief departures from the country which did not interrupt his continuous residence.

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 Guatemala, filed his application for permanent resident status under the LIFE Act (Form I-485) on July 31, 2001.

In a Notice of Intent to Deny (NOID), dated November 22, 2004, the director cited the applicant’s testimony at his LIFE legalization interview on April 17, 2003, that he entered the United States illegally in November 1981, got a job and established a residence in the United States, departed the country only twice thereafter on short-term visits to Guatemala in May 1986 and June 1988, and returned to the United States illegally after both visits. This testimony was at odds with information revealed in a background investigation, however, which showed that the applicant had entered the United States numerous times from Guatemala on a B-1 or B-2 visa (temporary visitor for business or pleasure) in 1984, 1988, 1990, 1992, and 1993. In order to receive a such a visa, the director pointed out, the applicant had to convince a U.S. consular official that he resided and worked in Guatemala. The director concluded that “[d]ue to the inconsistencies and contradictions in your verbal testimony and sworn statements” the applicant had failed to establish that he entered the United States before January 1, 1982 and maintained continuous unlawful residence in the country from that date through May 4, 1998. The director granted the applicant 30 days to submit additional evidence.

Doubt cast on any aspect of the applicant's evidence reflects on the reliability of the petitioner's remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92, (BIA 1988).

In response to the NOID, counsel submitted an affidavit from the applicant, dated December 2, 2004, asserting that he was nervous and confused at his LIFE legalization interview and therefore forgot to mention his two trips to Guatemala in February and March 2004 and his additional trip in March 1988, after each of which he returned to the United States with a visitor's visa. The applicant further asserted that he did not mention his later trips to Guatemala in the years 1990-1993 because he thought the interviewer only wanted to know about his departures from the United States during the years 1981-1988. According to the applicant, he acquired his visitor's visa(s) by fraud because he was actually residing unlawfully in the United States during the 1980s and 1990s. Counsel referred to previously submitted affidavits and letters from acquaintances and prior employers as evidence of the applicant's continuous residence in the United States from 1981 onward.

In the Notice of Decision, dated January 10, 2005, the director denied the application on the ground that the applicant had not submitted sufficient evidence to overcome the grounds of denial as detailed in the NOID.

On appeal, counsel reiterates the applicant's contention that the evidence of record establishes his continuous unlawful residence in the United States from the time of his initial entry into the country in 1981. Counsel asserts that the applicant's subsequent travels from Guatemala to the United States on a visitor's visa do not indicate that he still resided in Guatemala during those years. Counsel also submits photocopies of affidavits and letters already in the record.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish that his unlawful residence in the United States began before January 1, 1982, and continued uninterrupted through May 4, 1988. The AAO determines that he has not.

While the record indicates that the applicant began traveling to the United States with visitor's visas in 1984 and continued to do so into the 1990s, no contemporaneous documentation has been submitted – such as bank statements, rental agreements, utility bills, or earnings statements – to show that the applicant initially entered the United States as early as November 1981, that he established residence in the country before January 1, 1982, and that he resided continuously in the United States in an unlawful status through May 4, 1988. The only evidence of the applicant's residence in the United States prior to September 1988 is a series of affidavits and letters, most prepared in January 1991 and the others in January 2001, from acquaintances who claim to have known or employed the applicant during the 1980s.

Three affidavits and one letter dated in January 1991 are from individuals who stated that they knew the applicant on a social basis. Only two of the four individuals claim to have known the applicant since November 1981, however, while the others indicate that they met him in 1986 and 1988, respectively. The three affidavits were prepared in identical fill-in-the-blank formats with little input from the affiants and almost no information about how they met the applicant and the nature of their interaction with him over the years. These same shortcomings apply to the letter, which was very short and provided almost no information about the author's relationship to the applicant. Furthermore, none of the four individuals identified themselves with supporting documentation or offered any proof that they were in the United States themselves during the years 1981-1988.

Two affidavits and one letter dated in January 1991 are from individuals who claim to have employed the applicant from 1981 to 1990. Only one of these documents – from the personnel coordinator of The Woodlands, an executive conference center and resort located in The Woodlands, Texas, who states that the applicant was employed by the company performing “golf maintenance” and “helper” duties from July 24, 1984 to March 21, 1986 – comports with the regulatory requirements for an employer letter set forth at 8 C.F.R. § 245a.2(d)(3)(i). The other two documents – from business owners stating that the applicant was employed by Kenco International, Inc. from November 1981 to June 1984 and by Hodges Motorsports from early 1986 to late 1990 – do not comport with the regulatory requirements for an employer letter set forth at 8 C.F.R. § 245a.2(d)(3)(i). The former did not describe the applicant's job duties and the latter was not prepared as a sworn affidavit. Moreover, neither document identified the applicant's residential address during his time of employment and neither document declared whether the information about the applicant was taken from company records, identified the location of such records, and stated whether or not such records were available for review.

Two additional letters were prepared in January 2001 by individuals who claim to have known the applicant as a friend since March 1982 and August 1982, respectively. In addition to the fact that neither individual claims to have known the applicant before January 1, 1982, the letters provide no information whatsoever about the applicant or his interaction with them up to 1988. Furthermore, neither individual identified himself with supporting documentation or offered any proof that he was in the United States himself during the years 1981-1988.

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. The appeal will be dismissed, and the application denied.

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