

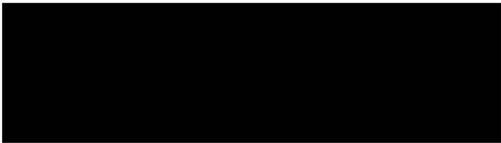
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U.S. Citizenship
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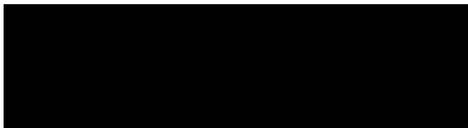
Office: HOUSTON

Date: NOV 20 2008

IN RE: Applicant: [REDACTED]

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 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 "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, Houston, Texas, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant had not submitted sufficient evidence to establish that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988. The director also denied the application because the applicant had exceeded the forty-five (45) day limit for a single absence from the United States during this period.

On appeal, counsel asserts that the applicant was never interviewed on October 4, 1994.

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. Section 1104(c)(2)(B)(i) of the LIFE Act; 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 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.

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.

"Continuous residence" is defined in the regulations at 8 C.F.R. § 245a.15(c)(1), as follows:

Continuous residence. An alien shall be regarded as having resided continuously in the United States if:

- (1) 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. [Emphasis added.]

The first issue to be addressed is the basis for the denial of the application.

On appeal, counsel's argues that it is not possible that the applicant was previously interviewed when the denial notice indicates that Citizenship and Immigration Services was not able to interview him due to his medical condition.

Counsel's argument is not supported by the record. The record reflects that the applicant did appear and was interviewed on May 13, 1991 and October 4, 1994. The interviews were conducted in order to determine class membership under the legalization class action lawsuit, *Catholic Social Services, Inc. v. Meese, vacated sub nom. Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993).

Although the regulation at 8 C.F.R. § 245a.19(a) requires all aliens filing applications for adjustment of status to be personally interviewed, the interview may be waived when it is impractical because of the health of the applicant. Likewise, under section 1104(c)(2)(E)(ii) of the LIFE Act, the Secretary of Homeland Security may waive all or part of the basic citizenship skills for applicants who are developmentally disabled. *See* 8 C.F.R. § 245a.17(c). In the instant case, the applicant's initial interview for his LIFE application was terminated on October 4, 2004, because the applicant was unable to speak or understand sufficient English to complete the interview. Subsequently, counsel provided documentation from a medical doctor outlining the applicant's disability and a Form N-648, Medical Certification for Disability Exception. The director determined that sufficient documents had been presented detailing the applicant's disability and accordingly, the interview was waived.

The basis for the denial of this application was not on a finding that the applicant was not interviewed, but rather the applicant had failed to establish that he resided in the United States in an unlawful status continuously from before January 1, 1982 through May 4, 1988.

The second issue is whether the applicant continuously resided in the United States in an unlawful status since before January 1, 1982.

The applicant, in his initial interview on May 13, 1991, informed the interviewing officer that he entered the United States in December 1981. However, at the time of his second interview, at the Houston legalization office on October 4, 1994, under oath and in the presence of an officer of the Immigration and Naturalization Service (now, Citizenship and Immigration Services), the applicant admitted in a sworn statement that he entered the United States in November or December 1982. In an attempt to establish his continuous unlawful residence during the requisite period, the applicant provided affidavits from a relative and acquaintances who attested to his residence prior to November 1982. The director, in her Notice of Intent to Deny, pointed out several inconsistencies between these affidavits, and in response, counsel provided new affidavits from the affiants.

The fact that the applicant admitted in a sworn statement that he did not enter the United States until November or December 1982, tends to establish that the applicant utilized documents in a fraudulent manner in an attempt to support his claim of residence in the United States from prior to January 1, 1982 through October 1982. By engaging in such an action, the applicant has irreparably harmed his own credibility as well as the credibility of his claim of continuous residence in the United States for the requisite period.

The third issue is the applicant's absence during the requisite period.

The applicant, in his initial interview on May 13, 1991, informed the interviewing officer that he had never departed the United States since his December 1981 entry.

The director's determination that the applicant had been absent from the United States for over 45 days was based on the applicant's own testimony in a sworn signed statement taken at the time of his second interview at the Houston legalization office on October 4, 1994. The Narrative Record of Sworn Statement reflects that the applicant stated he departed the United States for Mexico in May 1987 to visit his father and did not return until May 1988.

On August 25, 2006, the director issued a Notice of Intent to Deny, which advised the applicant of his testimony taken on October 4, 1994. Counsel, in response, asserted that the director did not identify the specific questions asked of the applicant during each of the interviews and, therefore, it is not known if the applicant had been posed with the identical questions or others. Counsel asserted that the applicant's answers must be analyzed in the context of the questions presented.

The applicant's testimony at the time of his initial interview coincides with the information on the Form for Determination of Class Membership signed by the applicant on May 13, 1991. The same questions listed on this form were asked by the interviewing officer on October 4, 1994.

Counsel stated that the applicant had received little or no education, could not read or write well in his own language, may have suffered dementia for most of his life, and has always had difficulty with dates and places. The assertion of counsel does not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaighbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel's assertion that the applicant was never interviewed on October 4, 1994 has no merit. The record clearly reflects that the applicant appeared at the Houston legalization office on October 4, 1994 and was interviewed. It is noted that the applicant signed the Narrative Record of Sworn Statement dated October 4, 1994.

Although emergent reason is not defined in the regulations, *Matter of C-*, 19 I. & N. Dec. 808 (Comm. 1988) holds that *emergent* means "coming unexpectedly into being." In other words, the reason must be unexpected at the time of departure from the United States and of sufficient magnitude that it made the applicant's return to the United States more than inconvenient, but virtually impossible. However, in the instant case, that was not the situation. There is no evidence to indicate that an emergent reason delayed the applicant's return to the United States. Moreover, this absence was not due to any "emergent reason" – *i.e.*, one that was unforeseen at the time of his departure – because visiting his father was the specific reason for the applicant's absence from the United States. The applicant's prolonged absence would appear to have been a matter of personal choice, not a situation that was forced upon him by unexpected events. The applicant's extended absence from the United States – far beyond the 45 days allowed by 8 C.F.R. § 245a.15(c)(1) – was not "due to emergent reasons" outside of his control that prevented him from returning far sooner.

Accordingly, the applicant's 1987 departure from the United States exceeded the 45-day period allowable for a single absence, as well as the 180-day aggregate total for all absences, and interrupted his "continuous residence" in the United States. The applicant has, therefore, failed to establish that he

resided in the United States in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required by the statute, section 1104(c)(2)(B)(i) of the LIFE Act, and by the regulations, 8 C.F.R. §§ 245a.11(b) and 245a.15(c)(1).

Accordingly, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

Finally, the record reflects that on July 15, 1991, the applicant was charged with theft in the Harris County District Court in Texas. On August 27, 1991, the applicant was convicted of this misdemeanor offense and was sentenced to serve ten days in jail. Case no. [REDACTED] While this conviction does not render the applicant ineligible pursuant to 8 C.F.R. §§ 245a.11(d)(1) and 18(a), the AAO notes that the applicant does have a misdemeanor conviction.

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