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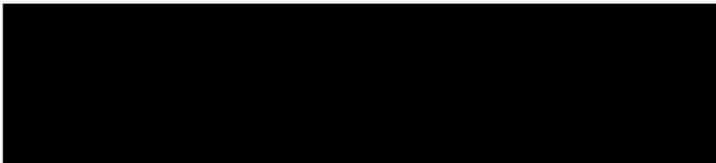
OCT 03 2008

IN RE: Applicant:



PETITION: 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.

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

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 Director, New Orleans, Louisiana, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The 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, and that he maintained continuous physical presence in the United States during the period from November 6, 1986, through May 4, 1988, as required under section 1104(c)(2)(B) and (C) of the LIFE Act.

On appeal, counsel for the applicant submits a brief.

An applicant for permanent resident status under section 1104 of the LIFE Act must 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, 1998.

“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.

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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). *See* 8 C.F.R. 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.13(f). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

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 submitted a Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act), on October 2, 1990. In connection with that application, the applicant submitted a statement indicating that he had initially entered the United States without inspection in 1982 and that he had departed the United States on only one occasion – from January 1988 to May 1988 in order to visit family in Mexico.

The applicant filed the current Form I-485, Application to Register Permanent Resident Status or Adjust Status, under the LIFE Act on December 17, 2001. On February 15, 2007, the director denied the application. The applicant filed a timely appeal from that decision on March 9, 2007.

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 from before January 1, 1982 through May 4, 1988, and his continuous physical presence in the United States during the period from November 6, 1986, through May 4, 1988.

A review of the record reveals that the applicant has submitted a variety of documentation establishing his presence in the United States since in or after 1995.

In an attempt to establish continuous unlawful status from before January 1, 1982, through May 4, 1988, and continuous physical presence in the United States during the period from November 6, 1986, through May 4, 1988, he has submitted the following documentation throughout the application process:

Employment letters

- A letter, notarized on September 18, 2006, from [REDACTED] of Vardaman, Mississippi, stating that the applicant worked for [REDACTED] in Calhoun County, Mississippi, in 1988.
- Three similar affidavits, dated October 27, 1992, from [REDACTED], [REDACTED], and [REDACTED], all self-identified as farm owners in Vardaman, Mississippi. [REDACTED] and [REDACTED] state that they employed the applicant at different times since 1982; [REDACTED] states he had known the applicant since 1982, and employed him since 1988. Each of the affiants state they do not have employment records available because they paid the applicant in cash.

Affidavits

- A letter, dated September 19, 2006, from [REDACTED] stating that she met the applicant in “the late 1980” (when he was thirteen-years old) while living with her mother in Las Milpas/South Pharr (Texas) when he came to her home looking for work. She states that he left with two men going north and that, when she moved to Mississippi in 1999, she saw him again.
- A letter, dated September 14, 2006, from [REDACTED] of Houston, Mississippi, stating that she rented a room in her home to the applicant for the entire year of 1988, during which he went to Mexico for about a month.
- An undated letter from [REDACTED], self-identified as the owner of J & M Motors in Houston, Mississippi, stating that the applicant purchased a car from the company in 1983, paid it off in 1985, and has since purchased several vehicles from the company and has paid them all off on time.

On appeal, counsel contends that the above-noted documentation establishes the applicant’s eligibility for adjustment of status under the LIFE Act. Counsel does not deny that the applicant left the United States in 1988 for five months, but asserts that “...[I]n the context of the approximately twenty-five years of residence in the United States...an absence of less than half a year to visit family can hardly be considered indicia of a serious, long-term, or committed absence from the United States....”

It is noted that there is evidence in the record that raises doubts concerning the applicant’s claimed absence(s) from the United States. The applicant states on his Form I-485 that his children – [REDACTED] and [REDACTED] – were born in Mexico on October 4, 1984, and May 20, 1986, respectively. However, while the applicant claims never to have departed the United States except for the five-month visit to Mexico in 1988, there is no evidence that the mother of the children was physically present in the United States prior to their births.

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).

The employment letters submitted do not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i) in that they fail to identify the applicant's address at the time of his employment, the exact periods of employment, and periods of layoff (if any). None of the affidavits, including the employment letters, include identifying documentation, or evidence of the affiants' residences in the United States at the time the statements were made. Generally, the affiants provide little information for concluding that they had direct and personal knowledge of the events and circumstances of the applicant's residence in the United States. As such, they can only be afforded minimal weight as evidence of the applicant's residence and presence in the United States throughout the requisite period.

The applicant admits to having departed the United States for a five-month visit to Mexico in 1988. While not directly dealt with in the director's decision, there must be a determination as to whether the applicant's prolonged absence from the United States was due to "emergent reasons." 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." At no point has the applicant put forth any reasons or any valid basis for his extended departure, as attested to at interview, from the United States during the requisite time period, or any evidence of his intent to return to the United States within 45 days of departure. Accordingly, in the absence of evidence that the applicant intended to return within 45 days after his departure, it cannot be concluded that emergent reasons "which came suddenly into being" delayed or prevented the applicant's return to the United States within the 45-day period allowed.

The regulation at 8 C.F.R. § 245a.12(e) provides that "[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods." Preponderance of the evidence is defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5th ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

The AAO finds that the applicant has failed to establish, by a preponderance of the evidence, that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, and that he maintained continuous physical presence in the United States during the period from November 6, 1986 through May 4, 1988, as required by 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.