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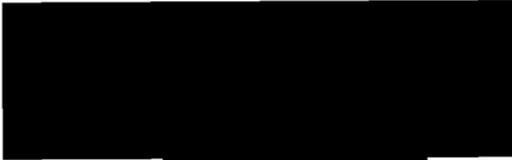
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC 02 183 64120

Office: GARDEN CITY

Date: OCT 10 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.

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, Garden City, New York, 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 had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. In addition, the director determined that the applicant had not established that he was continuously physically present in the United States from November 6, 1986 to May 4, 1988 because his admitted absence from this country when he traveled to Canada in 1987 could not be considered brief, casual, and innocent. Therefore, the director concluded that the applicant was ineligible to adjust to permanent residence under the provisions of the LIFE Act and denied the application.¹

On appeal, counsel contends that section 245A of the Immigration and Nationality Act (Act) contains no provision under which the applicant's absence from the United States in 1987 could be construed to break his continuous physical presence in this country. Counsel asserts that the director's determination that the applicant was not continuously physically present in the United States as a result of his absence was the only specific reason given as a basis for the director's denial. Counsel declares that the affidavits submitted by the applicant are sufficient evidence to support his claims of continuous residence in the United States from prior to January 1, 1982 through May 4, 1988 and continuous physical presence in this country from November 6, 1986 to May 4, 1988.

An applicant for permanent resident status must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b).

An applicant for permanent resident status must establish continuous physical presence in the United States in the period beginning on November 6, 1986 and ending on May 4, 1988. Section 1104(c)(2)(C) of the LIFE Act and 8 C.F.R. § 245a.11(c).

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 under the provisions of section 212(a) of the Act, 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).

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 to

¹ According to evidence in the record, the applicant was ordered removed on December 23, 1998.

May 4, 1988, the submission of any other relevant document including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

While the regulation at 8 C.F.R. § 245a.16(a) states that evidence establishing an applicant's continuous physical presence may consist of documentation issued by any governmental or nongovernmental authority, the regulation cited in the previous paragraph at 8 C.F.R. § 245a.2(d)(3)(vi)(L) must be considered to permit the submission of any other relevant document including affidavits to support a claim of continuous physical presence in the United States from November 6, 1986 to May 4, 1988.

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 "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 petitioner 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 or petitioner 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 or petition.

The first issue to be determined in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Act on or about October 23, 1991. It is noted that this Form I-687 application is dated July 30, 1991. At parts #16, #17, and #18 of the Form I-687 application where applicants were asked to describe the dates, manner, and places of entry into this country, the applicant indicated that he entered the United States on March 14, 1980 with a

crewman visa at Port Everglades, Florida. At part #33 of the Form I-687 application where applicants were asked to list all residences in the United States since the date of their first entry, the applicant listed [REDACTED] in Uniondale, New York from March 1980 to March 1981, [REDACTED] in Brooklyn, New York from 1981 to January 1984, and [REDACTED] in Brooklyn, New York from January 1984 to March 1991. Further, at part #35 of the Form I-687 application where applicants were asked to list all absences from the United States since entry, the applicant indicated that he was absent from this country when he traveled to Canada for thirty-five days from May 11, 1987 to June 15, 1987 to look for a job. Additionally, at part #36 of the Form I-687 application where applicants were asked to list all employment in the United States since first entry, the applicant listed employment with Deluxe Home Improvement from 1984 to 1985 and Delight Construction Company for unspecified dates.

With the Form I-687 application dated July 30, 1991, the applicant included a "Form for Determination of Class Membership in *CSS v. Thornburgh (Meese)*" in which he testified that he departed the United States on May 11, 1987 to travel by car to Canada to seek work. The applicant claimed that he subsequently reentered this country without inspection by car on June 15, 1987 on the class membership determination form.

The applicant subsequently submitted the Form I-485 LIFE Act application on April 1, 2002. With the Form I-485 LIFE Act application the applicant included another separate and undated Form I-687 application. At part #33 of this particular Form I-687 application where applicants were asked to list all residences in the United States since the date of their first entry, the applicant failed to list any information. In addition, at part #35 of this Form I-687 application where applicants were asked to list all absences from the United States since entry, the applicant indicated that he was absent from this country when he traveled to Canada for thirty-one days from April 10, 1987 to May 11, 1987 to look for a job. Furthermore, at part #36 of this Form I-687 application where applicants were asked to list all employment in the United States since first entry, the applicant listed employment with Deluxe Home Improvement from 1984 to 1985 and [REDACTED] from January 1986 to November 1987.

The applicant's testimony relating to his addresses of residence, dates and length of absence, and employment history on the Form I-687 application dated July 31, 1991 did not correspond and conflicted with his testimony relating to these subjects on the undated Form I-687 application. The applicant failed to provide any explanation for these discrepancies in his testimony on the two separate Form I-687 applications.

In support of his claim of continuous residence in the United States from prior to January 1, 1982, the applicant submitted photocopies of two separate Form I-95A, Crewman's Landing Permits. These documents reflect that the applicant was a crewmember of ships landing at various ports in the United States in the years 1977 through 1980.

The applicant included an affidavit signed [REDACTED] who stated that he was a friend of the applicant. Mr. [REDACTED] noted that the applicant had informed him that he was going to Canada

to look for work and had made arrangements with a broker in Buffalo, New York to cross the border into Canada for \$350.00. Mr. [REDACTED] declared that the applicant had shown him a bus ticket to Buffalo, New York but he advised the applicant not to take this trip. Mr. [REDACTED] indicated that the applicant did not heed his advice but instead subsequently telephoned from Buffalo, New York and then ten days later called again from Toronto, Canada. Mr. [REDACTED] related how in this last call he was informed that the applicant's prospects for a job in Canada did not look good and he was asked to look up the telephone number of the company for which the applicant had previously worked in Brooklyn, New York. Mr. [REDACTED] stated that could not find this telephone number, and therefore, did not call the applicant back.

The applicant provided an affidavit dated November 8, 1990 that is signed by [REDACTED]. Mr. [REDACTED] stated that he had personally known the applicant since 1980 and the applicant had lived in the United States since such date. Although [REDACTED] provided the applicant's address as of the date the affidavit was executed, he failed to provide any specific and verifiable testimony regarding the applicant's residence in this country during the requisite period despite claiming that he had known the applicant since 1980.

The applicant submitted a letter dated August 7, 1990 containing the letterhead stationary and signature of [REDACTED] of Freeport, New York. Dr. [REDACTED] included the applicant's address as of the date of the letter and stated that the applicant first visited his office on August 15, 1980. Dr. [REDACTED] declared that the applicant was suffering from symptoms of a peptic ulcer on the date of this visit and he remained under treatment for the next twelve weeks. However, [REDACTED] neither directly attested to nor provided specific and verifiable testimony relating to the applicant's residence in the United States during the requisite period. In addition, the fact that this letter was not accompanied by any corresponding medical records also limits the probative value of [REDACTED] testimony.

The applicant included a notarized letter dated November 10, 1990 on the letterhead stationary of Deluxe Home Improvements in Brooklyn, New York that contains an illegible signature. The author of the letter noted that the applicant had been temporarily employed by this enterprise as a construction helper from 1984 to 1985 and had been paid off the books during his period of employment. Nevertheless, the author of this letter failed provide the applicant's address at the time of employment as required by 8 C.F.R. § 245a.2(d)(3)(i).

The applicant provided two original bills from Brooklyn Union for gas service to [REDACTED] in Brooklyn, New York from August 16, 1983 to October 17, 1983 and from December 13, 1985 to January 7, 1986. However, neither of these bills contained any information or reference relating to the applicant and he failed to claim that he lived at this address at any time on the two Form I-687 applications in the record.

The record shows that the applicant was interviewed regarding his Form I-485 LIFE Act application at the CIS Office in New York, New York on May 5, 2004. The notes of the interviewing officer reveal that the applicant testified that he entered the United States with a

crewman visa in August 1980. The applicant further testified that he lived in Brooklyn, New York in August and September of 1981, [REDACTED] on Long Island, New York from September 1981 to 1982, [REDACTED] in Brooklyn, New York in 1982, and then a basement apartment on [REDACTED], in Brooklyn, New York for two years. The applicant noted that he traveled to Canada in April of 1987 to look for work and gain legal residence. The applicant stated that he worked fulltime for Deluxe Home Improvement in 1984 and 1985 but he then worked part-time from 1985 to 1988.

The applicant's testimony relating to his date of entry into the United States, addresses of residence, dates and length of absence, and employment history at his interview on May 5, 2004 did not correspond and conflicted with his testimony relating to these subjects on the Form I-687 application dated July 30, 1991 as well as his date of entry into this country and the employment history listed on the separate undated Form I-687 application in the record. The applicant failed to advance any explanation for these multiple contradictions between his testimony at his interview and the testimony he provided in the two separate Form I-687 applications.

The director subsequently issued a notice of intent to deny dated September 14, 2007 to the applicant informing him of CIS's intent to deny his application because he failed to submit sufficient evidence of continuous unlawful residence in the United States from January 1, 1982 through May 4, 1988. The director noted that the applicant had also provided contradictory testimony relating to critical elements of his claim of residence in this country for the period in question at his interview on May 5, 2004 and on the two separate Form I-687 applications. In addition, the district director determined the applicant's absence from the United States in 1987 when he traveled to Canada to look for work was not brief, causal, and innocent, and consequently, had broken his continuous unlawful presence in this country from November 6, 1986 to May 4, 1988. The applicant was granted thirty days to respond to the notice.

In response, counsel submitted a statement in which he asserted that the applicant had submitted sufficient evidence to establish both his continuous residence and continuous physical presence in the United States for each respective requisite period. Counsel asserted that an absence of less than 45 days from this country was considered brief, casual, and innocent under section 245A of the Act and that the purpose of the trip was irrelevant under that same section of law.

The director determined that the applicant failed to submit sufficient credible evidence demonstrating his residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988, as well as his continuous physical presence in this country from November 6, 1986 to May 4, 1988. Consequently, the director denied the Form I-485 LIFE Act application on November 9, 2007.

Counsel asserts that the director's determination that the applicant was not continuously physically present in the United States as a result of his absence in 1987 was the only specific reason given as a basis for the director's denial. However, counsel's assertion is without merit in that in the notice of intent to deny issued on September 14, 2007, the director cited deficiencies

in two supporting affidavits as well as the applicant's own contradictory testimony relating to his claim of residence in concluding that the applicant failed to submit sufficient credible evidence demonstrating his continuous unlawful residence in the United States for the requisite period.

Counsel declares that the evidence submitted by the applicant was sufficient to support his claim of continuous residence in the United States for the period in question. Nevertheless, the supporting documents submitted by the applicant are limited in probative value as these documents lack sufficient detail and verifiable information to substantiate the applicant's claim of residence in the United States since prior to January 1, 1982. Moreover, the applicant himself has provided contradictory and conflicting testimony relating to critical elements of his claim of residence in this country during the requisite period.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The absence of sufficiently detailed supporting documentation and the fact that the applicant himself offered contradictory testimony relating to his claim of continuous residence seriously undermines the credibility of the applicant's claim of residence for the period in question and the credibility of the documents submitted in support of such claim. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing both her residence in the United States since prior to January 1, 1982 to May 4, 1988 and physical presence in this country from November 6, 1986 to May 4, 1988 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.12(e) and *Matter of E-- M--*, 20 I&N Dec. 77.

Given the applicant's reliance upon documents with minimal probative value and his own contradictory testimony, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988 as required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis.

The next issue to be examined in this proceeding is whether the applicant's continuous physical presence in United States was broken as result of his admitted absence from this country when he traveled to Canada in 1987 because such absence could not be considered brief, casual, and innocent.

On appeal, counsel contends that section 245A of the Act contains no provision under which the applicant's absence from the United States in 1987 could be construed to break his continuous physical presence in this country. Regardless, the provisions of section 1104 of the LIFE Act and the corresponding regulations at subpart B of 8 C.F.R. § 245a are the controlling statute and regulations in this proceeding as the applicant has applied for permanent residence under the provisions of the LIFE Act. Section 245A of the Act would be relied upon only in those specific circumstances either by reference or omission within section 1104 of the LIFE Act and the corresponding regulations at subpart B of 8 C.F.R. § 245a.

The statute at section 1104(c)(2)(C)(i)(I) of the LIFE Act reads in pertinent part as follows:

[A]n alien shall not be considered to have failed to maintain continuous physical presence in the United States for purposes of this subparagraph by virtue of brief, casual, and innocent absences from the United States. . . .

The regulation at 8 C.F.R. § 245a.16(b) reads as follows:

For purposes of this section, 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. Also, brief, casual, and innocent absences from the United States are not limited to absences with advance parole. Brief, 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.

The applicant has consistently claimed throughout these proceedings that he was absent from the United States when he traveled to Canada to look for work for approximately one month in 1987 in testimony on the two Form I-687 applications, the class membership determination form, and his interview on May 5, 2004. By leaving for Canada in search of employment, the applicant intentionally discontinued his residence in the United States to look for employment in Canada. His absence was intentional rather than casual. The applicant provided a corroborative affidavit from [REDACTED] confirming his testimony regarding this absence. In fact, [REDACTED] testimony indicates that the applicant was smuggled into Canada by a "broker" for \$350.00 on this occasion. The applicant failed to provide any documentary evidence to establish that he had permission from the Canadian government to enter that country and seek employment. Consequently, it cannot be concluded that the purpose of the applicant's trip to Canada was either casual or innocent. The applicant acknowledged that he reentered the United States without inspection when he returned to this country after his absence on the class membership determination form. The applicant's manner of reentry to the United States was unlawful and contrary to the policies reflected in the immigration laws of this country. As such, it cannot be concluded that the purpose of the applicant's absence during the requisite period was brief, casual, and innocent within the meaning of 8 C.F.R. § 245a.16(b).

Thus, the applicant failed to establish that he was continuously physical present in the United States in the period beginning on November 6, 1986 and ending on May 4, 1988 as required by 8 C.F.R. § 245a.11(c), and, therefore, is ineligible to adjust permanent resident status under the provisions of the LIFE Act on this basis as well.

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