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MSC 02 206 60775

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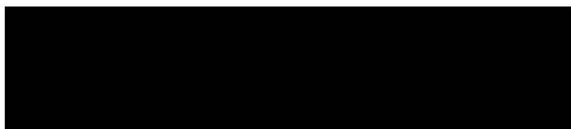
OCT 22 2008

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

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 District Director, Memphis, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. The director noted numerous inconsistencies in the applicant's testimony and application.

On appeal counsel for the applicant fails to address the noted inconsistencies but submits additional evidence.

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. 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).

"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 on hundred and eighty days (180) 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. *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988) holds that emergent means "coming unexpectedly into being."

An applicant must establish eligibility by a preponderance of the evidence. 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.

Citizenship and Immigration Services (CIS) regulations provide an illustrative list of contemporaneous documents that an applicant may submit to establish presence during the required period. 8 C.F.R. § 245a.15(b)(1); *see also* 8 C.F.R. § 245a.2(d)(3)(vi)(L). Such evidence may include employment records, tax records, utility bills, school records, hospital or medical records, or attestations by churches, unions, or other organizations so long as certain information is included. The regulations also permit the submission of affidavits and any other relevant document, but applications submitted with unverifiable documentation may be denied. Documentation that does not cover the required period is not relevant to a determination of the alien's presence during the required period and will not be considered or accorded any evidentiary weight in these proceedings.

On May 21, 2004, the director sent the applicant a Notice of Intent to Deny (NOID), which stated that the evidence submitted by the applicant was insufficiently probative of continuous unlawful residence in the U.S. from prior to January 1, 1982 through May 4, 1988, and continuous physical presence in the U.S. from November 6, 1986 through May 4, 1988.

The applicant submitted a written response.

On May 28, 2005, the director denied the application because the applicant had failed to establish his continuous unlawful presence during the required period.

On appeal the applicant asks that CIS reconsider his application. Relevant to the period in question the record contains the following evidence:

- (1) Statement by [REDACTED] asserting the applicant has been in the United States since 1979.
- (2) Statement by [REDACTED] asserting the applicant has been in the United States since 1979.
- (3) Statement by [REDACTED] asserting the applicant has been in the United States since 1979.
- (4) Statement by [REDACTED] asserting the applicant has been in the United States since 1979.
- (5) Statement by [REDACTED] asserting the applicant has been in the United States since 1979.
- (6) Statement by [REDACTED] asserting the applicant has been in the United States since 1979 and that they occasionally worked together.
- (7) Statement by [REDACTED] asserting he has known the applicant between 1981 and 1988.
- (8) Statement by [REDACTED] asserting she has known the applicant since October 1981.

As stated above, the inference to be drawn from the documentation provided shall depend on the *extent* of the documentation. The minimal evidence furnished cannot be considered extensive, and in such cases a negative inference regarding the claim may be made as stated in 8 C.F.R. § 245a.12(e).

Counsel fails to understand that the applicant must submit *evidence* of the applicant's eligibility. Submitting a third party statement in lieu of evidence requires that such statement consist of more than the simple statement such as "I know the applicant has been living in the United States since 1979." Without sufficient detail to provide context to a statement, and the ability of CIS to verify the details of a statement, it is merely an unsupported statement and does not constitute evidence. In this case many of the applicants do not even make a sufficient allegation to make their statements relevant (such as stating that they "have known the applicant between 1981 and 1988" with no regard to the applicant's residence or other corroborating details). Documents which generically assert an affiant has known an applicant since a particular year are not sufficiently probative to support assertions of eligibility. In a case such as this, where the record consists of evidence which clearly contradicts the applicant's assertions, such statements are useless.

As noted by the director the applicant was apprehended entering the United States by the border patrol in 1990, at which time the applicant asserted he had originally entered the United States in May 1987. On his application the applicant listed 7 children, all born in Mexico, in 1983, 1984, 1986, 1988, 1990 and 1993, and yet listed only one absence from December 1986 to May 1987, and asserting that his wife had never left Mexico. Thus, the applicant's assertions of entering the United States prior January 1, 1982, and residing continuously thereafter in an unlawful status thereafter is contradicted by his own testimony and implausible given the births of his children in Mexico. In light of the evidence contradicting the applicant's assertions the third party statements submitted above are not sufficiently probative to rehabilitate the noted inconsistencies.

In addition, the applicant admitted that he was absent from the United States for more than 45 days from December 1986 to May 1987. This absence breaks his chain of continuous unlawful residence and renders him ineligible as a matter of law.

The discrepancies and errors catalogued above lead the AAO to conclude that the evidence of the applicant's eligibility is not credible. Accordingly, the applicant has not established the eligibility and the appeal will be dismissed.

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