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U.S. Citizenship
and Immigration
Services



L2

FILE: [REDACTED] MSC 02 211 64407

Office: NEW YORK Date:

OCT 29 2008

IN RE: Applicant: [REDACTED]

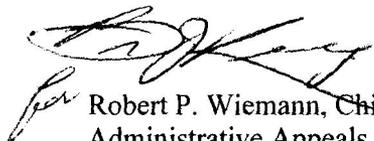
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

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

The director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

On appeal, counsel does not address the basis for the denial of the application. He merely submits an affidavit in support of the appeal.

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.

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 record contains a copy of the applicant’s Moroccan passport which reveals that on May 28, 1987, the applicant was issued a B-2 multiple entry nonimmigrant visa in Casablanca, Morocco, which expired on May 28, 1988. The Form I-94, Departure Record, indicates the applicant lawfully entered the United States on August 18, 1987.

At the time the applicant filed his Form I-687 and LIFE applications, he presented no evidence to establish his continuous unlawful residence since before January 1, 1982, through May 4, 1988.

At the time of his interview, the applicant indicated his absences from the United States during the requisite period as October 6, 1986 to November 15, 1986 to visit his sick father, and July 15, 1987 to August 18, 1987 to get married

On May 7, 2007, the director issued a Notice of Intent to Deny, which advised the applicant of his failure to present evidence documenting his continuous unlawful residence during the requisite period and that the documents submitted served to establish his residence subsequent to the requisite period. The director further advised the applicant that the B-2 visa which was issued in Casablanca contradicted his testimony that he was in the United States at the time the visa was issued.

The director also noted that absences between November 6, 1986 and May 4, 1988 must be brief, casual and innocent for an applicant to maintain the continuous physical presence requirement. The director determined that the applicant's absence of 34 days was not considered to be brief.

The applicant was granted 30 days in which to submit additional evidence. Counsel, in response, requested an additional 60 days in which to provide additional evidence.

It must be noted that the director erred in applying a thirty (30) day limit for a single absence in the period from November 6, 1986, to May 4, 1988, as set forth in 8 C.F.R. § 245a.16(b). This regulation has been amended and the previous reference to a "thirty (30) day limit" on absences has been removed. The current, amended regulation 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.

In issuing the Notice of Decision dated July 2, 2007, the director denied counsel's request for additional time. The director noted that counsel's letter did not address the applicant's case or explain why additional time was needed to provide more evidence. The director concluded that the applicant had not furnished any evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period.

On appeal, counsel provides an affidavit from _____ of Round Rock, Texas, who only indicated that the applicant was his part-time roommate in New York City from 1985 to 1987.

The AAO does not view this single affidavit as substantive enough to support a finding that the applicant continuously resided in the United States since before January 1, 1982, through May 4, 1988. The affidavit cannot serve to establish the applicant's residence prior to 1985. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim.

The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982, and resided in this country in an unlawful status continuously from before January 1,

1982, through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant 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.