

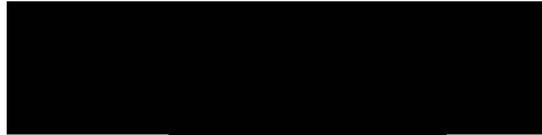
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



L2

FILE:

MSC 02 239 62382

Office: LOS ANGELES

Date: **SEP 26 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: On September 9, 2006, the District Director, Los Angeles, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to establish that he satisfied the basic citizenship skills requirement under section 1104(c)(2)(E) of the LIFE Act. The director provided the applicant two opportunities to pass the English literacy and/or the United States history and government tests. The applicant failed to pass the tests or to submit relevant evidence as described in the regulations at 8 C.F.R. § 245a.17. The district director also denied the application because the applicant failed to establish that he entered the United States prior to January 1, 1982, and that he resided continuously from before January 1, 1982, through May 4, 1988.

On appeal, the applicant asserts that he has enrolled in an ESL class and that he did satisfy the requirement to demonstrate his proof of presence from 1982 to 1988.

The first issue in this case is whether the applicant failed to demonstrate the necessary basic citizenship skills required under section 1104(c)(2)(E)(i) of the LIFE Act.

Under section 1104(c)(2)(E)(i) of the LIFE Act (“Basic Citizenship Skills”), an applicant for permanent resident status must demonstrate that he or she:

- (I) meets the requirements of section 312(a) of the Immigration and Nationality Act (8 U.S.C. 1423(a)) (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States); or
- (II) is satisfactorily pursuing a course of study (recognized by the Attorney General) to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

Under section 1104(c)(2)(E)(ii) of the LIFE Act, the Attorney General may waive all or part of the requirements for aliens who are at least 65 years of age or developmentally disabled. The applicant, who is neither 65 years old nor developmentally disabled, does not qualify for either of the exceptions in section 1104(c)(2)(E)(ii) of the LIFE Act.

Nor does the applicant satisfy the “basic citizenship skills” requirement of section 1104(c)(2)(E)(i)(I) of the LIFE Act because he does not meet the requirements of section 312(a) of the Immigration and Nationality Act (Act). An applicant can demonstrate that he or she meets the requirements of section 312(a) of the Act by “[s]peaking and understanding English during the course of the interview for permanent resident status” and answering questions based on the subject matter of approved citizenship training materials, or [b]y passing a standardized section 312 test . . . by the Legalization Assistance Board with the Educational Testing Service (ETS) or

the California State Department of Education with the Comprehensive Adult Student Assessment System (CASAS).” 8 C.F.R. §§ 245a.3(b)(4)(iii)(A)(1) and (2).

In the alternative, an applicant can satisfy the basic citizenship skills requirement by demonstrating compliance with section 1104(c)(2)(E)(i)(II) of the LIFE Act. The citizenship skills requirement of the section 1104(c)(2)(E)(i)(II) is defined by regulation in 8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3). As specified therein, an applicant for LIFE Legalization must establish that:

- (1) He or she has complied with the same requirements as those listed for naturalization applicants . . . ; or,
- (2) He or she has a high school diploma or general education development diploma (GED) . . . ; or,
- (3) He or she has attended, or is attending, a state recognized, accredited learning institution in the United States, and that institution certifies such attendance. The course of study at such learning institution must be for a period of one academic year (or the equivalent thereof according to the standards of the learning institution) and the curriculum must include at least 40 hours of instruction in English and United States history and government. . . .”

Both 8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3) specify that applicants must submit evidence to show compliance with the basic citizenship skills requirement “*either at the time of filing Form I-485, subsequent to filing the application but prior to the interview, or at the time of the interview*” (Emphasis added).

The regulation at 8 C.F.R. § 245a.17(b) states that:

An applicant who fails to pass the English literacy and/or the United States history and government tests at the time of the interview, shall be afforded a second opportunity after 6 months (or earlier at the request of the applicant) to pass the tests or submit evidence as described in paragraphs (a)(2) and (a)(3) of this section [8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3)]. The second interview shall be conducted prior to the denial of the application for permanent residence and may be based solely on the failure to pass the basic citizenship skills requirements.

Pursuant to 8 C.F.R. § 245a.17(b), the applicant was given two opportunities to demonstrate the necessary basic citizenship skills. During his first interview on April 21, 2005, the applicant failed to demonstrate a minimal understanding of ordinary English and knowledge of civics and history of the United States. On that day, the interviewing officer issued the applicant a Request for Evidence (RFE). The RFE noted that the applicant had failed to demonstrate basic citizenship skills and informed the applicant that in lieu of demonstrating basic citizenship skills,

he could furnish proof of enrollment or completion of attendance at a state-recognized, accredited learning institution in the United States for one academic year or the equivalent. The RFE specified that the proof of enrollment or completion must indicate at least 40 hours of instruction in English, U.S. history and government, that it must be on official letterhead, contain an official seal, and show the hours and dates of attendance. The applicant was given 180 days to submit the requested documents. When the applicant appeared for his second interview on May 12, 2006, he submitted a registration form dated February 16, 2006, from the Los Angeles School District Division of Adult Education and Career Education, indicating enrollment in a class called Citizenship that met Saturdays at 7:30am. The applicant did not establish a minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States. The applicant does not dispute this on appeal, but asserts that he enrolled in the above-mentioned course, has completed half of the hours required to receive a certificate, and needs additional time to complete the requirement.

The applicant did not provide evidence of having passed a standardized citizenship test, as permitted by 8 C.F.R. § 312.3(a)(1). The applicant does not have a high school diploma or a GED from a United States school, and therefore does not satisfy the regulatory requirement of 8 C.F.R. § 245a.17(a)(2). The applicant did not submit evidence to show compliance with the basic citizenship skills requirement either at the time of filing his Form I-485, subsequent to filing the application but prior to the interview, or at the time of the second scheduled interview. The registration form mentioned above does not meet regulatory requirements. It is not on official letterhead, does not contain an official seal, or show the hours and dates of attendance. The registration form does not indicate that this is a state-recognized, accredited learning institution in the United States and does not indicate that this class provided at least 40 hours of instruction in English and U.S. history and government that was offered for one academic year or the equivalent. Thus, the applicant has not satisfied the alternative of the basic citizenship skills requirement set forth in section 1104(c)(2)(E)(i) of the LIFE Act. Accordingly, the director's decision that the applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act will be affirmed.

The second issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden of establishing by a preponderance of the evidence, that his claim of entry into the United States before January 1, 1982, and continuous residence in the United States during the requisite period is probably true. Upon examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has failed to meet this burden.

An applicant for permanent resident status under section 1104 of the LIFE Act 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. See § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite period, 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 states 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 or 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 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.12(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 record reflects that on June 9, 2003, the applicant submitted the current application. On May 24, 2004, the applicant appeared for an interview based on the application.

The record of proceeding contains the following evidence relating to the requisite period:

Letters and Affidavits

- Three letters from friends of the applicant attesting to his hard work and good moral character and claiming a relationship with the applicant since either 1981 or 1982. The first is an affidavit dated February 16, 2006, from [REDACTED] Mr. [REDACTED] states that the applicant lived at his address from November 1981 to October 1985 and that the applicant worked at his auto shop, Royal Transmission, in Pacoima, California. He asserts that the applicant is an honest, responsible, and hardworking person. The second is a letter dated July 6, 2001, from [REDACTED]. The letter is not notarized. [REDACTED] states that he personally knows the applicant and that the applicant has been his mechanic since February 1982. He asserts that the applicant is an honest, hardworking, and reliable person. The third is a letter from [REDACTED]. The letter is not dated and not notarized. [REDACTED] states that he has known the applicant since September 1981. He states that he and the applicant exchange information about the technical aspects of repairing transmissions. While [REDACTED] states that the applicant lived at his address for four years, he fails to provide the specific address and fails to submit corroborating evidence of the applicant's residence in the dwelling, such as a lease or rent receipts, or in the alternative, an explanation of the payment arrangements that existed with the applicant. Neither [REDACTED] nor [REDACTED] indicates where or when either they or the applicant resided in the United States during the requisite period. None of the affiants describe where they met the applicant, if it was in the United States or elsewhere, or describe under what circumstances they met. All of them fail to provide details regarding their claimed relationship with the applicant for over 20 years that would lend credibility to their statements. These letters therefore have minimal weight as evidence of the applicant's residence in the United States during the requisite period.

For the reasons noted above, these affidavits can be given little evidentiary weight and are of little probative value as evidence of the applicant's residence and presence in the United States for the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period.

The record of proceedings contains other documents, including the applicant's California Driver's License issued on December 31, 2003, and 1997 through 2001 Internal Revenue Service (IRS) Forms 1040, Individual Income Tax Returns, with accompanying IRS Forms W-2, Wage and Tax Statements. All of this evidence is dated after May 4, 1988, and does address the applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have first entered the United States in June 22, 1981, without

inspection and to have resided for the duration of the requisite period in California. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has failed to do so. In this case, his assertions regarding his entry are not supported by any credible evidence in the record.

Having examined each piece of evidence, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has not shown by a preponderance of the evidence he entered into the United States before January 1, 1982, and that he resided continuously in an unlawful status for the requisite period.

The absence of sufficiently detailed and probative documentation to corroborate the applicant's claim of entry and continuous residence for the entire requisite period, detracts from the credibility of his 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. Given the applicant's reliance on affidavits alone, which lack relevant details, and the lack of any probative evidence of his entry and residence in the United States from prior to January 1, 1982, through May 4, 1988, the applicant has failed to establish by a preponderance of the evidence that he maintained continuous, unlawful residence in the United States as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, 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.