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U.S. Citizenship
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Services

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FILE:

MSC 03 189 62786

Office: NEWARK

Date: FEB 04 2009

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. 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.

for 
John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the director in Newark, New Jersey, on the ground that the applicant failed to pass the test of his basic citizenship skills. The applicant filed an appeal with the district office, which forwarded the matter to the Administrative Appeals Office (AAO). The AAO will withdraw the director's decision, but will dismiss the appeal on the ground that the applicant failed to establish his continuous unlawful residence in the United States during the period required for legalization under the LIFE Act.

The applicant, a native of Ecuador who was born on February 26, 1931, and claims to have lived in the United States since December 1980, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on April 7, 2003.

On December 21, 2006, the director issued a decision denying the application on the ground that the applicant failed to meet the "basic citizenship skills" required under section 1104(c)(2)(E) of the LIFE Act.

Under section 1104(c)(2)(E)(i) of the LIFE Act, regarding 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 [Secretary of Homeland Security]) 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 Secretary of Homeland Security may waive all or part of the above requirements for aliens who are at least 65 years of age or who are developmentally disabled. *See also* 8 C.F.R. § 245a.17(c).

On October 17, 2003 and again on October 3, 2006, the applicant was interviewed for LIFE legalization. On both occasions he failed to demonstrate a basic understanding of ordinary English and a basic knowledge of U.S. history and government during the examination portion of the interview.

On appeal counsel asserts that the applicant is eligible for a waiver of the basic citizenship skills requirement because he suffered a brain injury that has resulted in a permanent disability.

The record reflects that the applicant was over 65 years old on the date of filing his Form I-485 (April 7, 2003). The applicant was 72 years old at the time of his initial LIFE legalization interview and therefore is eligible for a waiver under section 1104(c)(2)(E)(ii) of the LIFE Act.

Accordingly, the denial of the application by the director on the ground that the applicant failed to establish that he satisfied the “basic citizenship skills” required under section 1104(c)(2)(E) of the LIFE Act will be withdrawn.

Consistent with its plenary power under 5 U.S.C. § 557(b) to review each appeal on a *de novo* basis, the AAO will also review the evidence of record relating to the applicant’s claim of continuous unlawful residence and physical presence in the United States during the requisite periods for legalization under the LIFE Act.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. *See* section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

“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.” (Emphases added.)

“Continuous physical presence” is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: “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.” (Emphasis added.) The regulation further explains that “[b]rief, 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.” (Emphasis added.) 8 C.F.R. § 245a.16(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 and been physically present 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 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 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 documentation submitted by the applicant in support of his claim to have entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status during the requisite period consists of the following:

- An undated letter of employment from [REDACTED], owner of [REDACTED] (location not specified), stating that the applicant was employed in general maintenance, such as carpentry, painting, plumbing, from May 1981 to June 1983, and was paid a weekly salary of \$175.00.

Eighteen copies of photographs showing the applicant with other individuals at various locations, with no date stamps or other indicia as to when the photographs were taken.

Several notarized letters and affidavits, dated in 1985, 1990, 1991, and 2003, from individuals who claim to have rented a room to, resided with, or otherwise known the applicant since the early 1980s.

A letter from [REDACTED], operations officer at 1st Nationwide Bank in Plainfield, New Jersey, dated July 28, 1990, stating that the applicant opened an account with the bank on May 26, 1983, that had a current balance of \$358.42.

- An “Ecuatoriana” Air Waybill indicating a shipment by the applicant from New York City by air to Quito, Ecuador, dated February 17, 1988.
A letter envelope addressed to the applicant at [REDACTED], Plainfield, New Jersey, by an individual from Canada, with an illegible postmark on the front of the envelope and a date stamp on the back of the envelope from Newark, New Jersey, of March 13, 1982.
- A letter dated December 2, 1989, from [REDACTED] Agency, Insurance in Piscataway, New Jersey, which stated that the applicant had insurance with him since February 1981, but did not identify the applicant’s address or type of insurance.
A letter from [REDACTED] vice president engineering of [REDACTED] Corporation of America, dated March 12, 1985, stating that the applicant was promised immediate employment with the company.
An “employment affidavit” from [REDACTED] addressed to [REDACTED] – apparently an alias used by the applicant, but not acknowledged by the applicant on his Form I-687, Form G-325A, or anywhere else in the record – stating that [REDACTED] was employed by [REDACTED] Corporation of America in South Plainfield, New Jersey, from May 12, 1983 to the present (no date identified, but around 1990).
- A letter from [REDACTED] Director of Human Resources for [REDACTED] stating that “[REDACTED] began paying union dues in September 1983.

The AAO has reviewed each document in its entirety to determine the applicant’s eligibility; however, the AAO will not quote each document in this decision.

The applicant stated on a Form I-687 (application for status as a temporary resident) filed on June 6, 1991, that he was absent from the United States on a family visit to Ecuador from March 6, 1983 to May 1, 1983 – a total of 57 days.¹ This absence from the United States exceeded the 45-day maximum for a single absence prescribed in the regulation at 8 C.F.R. § 245a.15(c)(1). An absence of such duration interrupts an alien’s continuous residence in the United States unless (s)he can show that a timely return to the United States could not be accomplished due to emergent reasons. While the term “emergent reasons” is not defined in the regulations, there is some pertinent case law. In *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), the Board of Immigration Appeals held that *emergent* means “coming unexpectedly into being.” The applicant has not established that emergent reasons, within the meaning of 8 C.F.R. § 245a.15(c)(1), prevented his return to the United States from Ecuador in 1983 within the 45-day period allowed in the regulation. Accordingly, the applicant’s trip to Ecuador in 1983 would have interrupted his continuous residence in the United States. On this ground alone, therefore, the applicant has failed to establish his eligibility for legalization under the LIFE Act.

¹ Passport records in the file confirm that the applicant was issued a B-2 visa by the United States Embassy in Quito on March 10, 1983, with which he entered the United States on May 1, 1983.

The undated letter of employment from [REDACTED], owner of [REDACTED] does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because the affiant did not indicate whether the information was taken from company records, and did not indicate whether such records are available for review. In addition, [REDACTED] did not identify the company's address and did not provide a phone number or other contact information. Nor was the letter supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed during any of the years claimed. Thus, the letter from Mr. [REDACTED] has limited probative value. It is not persuasive evidence that the applicant resided continuously in the United States from before January 1, 1982 through May 4, 1988, as required for legalization under the LIFE Act.

The affidavits and letters in the record – dated in 1985, 1990, 1991, and 2003 – from acquaintances who claim to have rented a room to, resided with, or otherwise known the applicant during the 1980s, have mostly minimalist or fill-in-the-blank formats with little personal input by the authors. Considering the length of time they claim to have known the applicant – in most cases since 1981 – the authors provide remarkably few details about his life in the United States, and their interaction with him over the years. Nor are the affidavits and letters accompanied by any documentary evidence – such as photographs, letters, and the like – of the authors' personal relationship with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the affidavits and letters have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

The letter from 1st Nationwide Bank in 1990, stating that the applicant had an account that was opened in May 1983, as well as the letter from the insurance agent in 1989, stating that the applicant had a policy since 1981, did not identify the applicant's address in the intervening years. Accordingly, they have little probative value as evidence of the applicant's continuous residence in the United States from 1983 through May 4, 1988.

The copies of the photographs of the applicant and other individuals do not bear date stamps or any other indication as to when they were taken. Even if some of the photographs dated from the 1980s, they would not prove that the applicant was residing in the United States at that time, as opposed to visiting. Thus, the photographs have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

As for the remaining documentation in the record, although some of the documents – such as the Air Waybill and the letter envelope with a 1982 postmark – may be authentic, there is too much inconsistent information and suspect documentation – such as the [REDACTED] documents referring to an otherwise unidentified [REDACTED] – which undermines the credibility of all the evidence for the time frame of required continuous residence in the United States (1981-1988). It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice

without competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

Based on the foregoing analysis of the evidence, including the applicant's 57-day absence from the United States discussed earlier, the AAO concludes that the applicant has failed to establish that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act. Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

The appeal will be dismissed, and the application denied.

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