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U.S. Citizenship  
and Immigration  
Services

L2



FILE:

MSC 03 248 62994

Office: SALT LAKE CITY

Date: FEB 24 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).

IN 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.

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, Salt Lake City, Utah, 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. The director also denied the application because the applicant had failed to establish that he satisfied the “basic citizenship skills” required under section 1104(c)(2)(E) of the LIFE Act.

On appeal, counsel asserts the affidavit submitted in response to the Notice of Intent to Deny was indeed notarized and that the applicant is currently in the process of enrolling in an English as a Second Language (ESL) course.

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. Section 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 periods, is admissible to the United States under the provisions of section 212(a) of the Immigration and Nationality Act (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).

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.

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.

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 first issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period. Here, the applicant has failed to meet this burden.

According to the interviewing officer's notes at the time of the applicant's initial interview on December 9, 1994, the applicant first entered the United States on February 20, 1984.

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant only provided notarized affidavits from [REDACTED] of Rankin, Texas, a cousin, [REDACTED], and [REDACTED] of San Bernardino, California. Mr. [REDACTED] indicated that the applicant was in his employ on and off since 1986. [REDACTED] attested to the applicant's absence from the United States from August 1, 1987 to August 15, 1987, and [REDACTED] attested to the applicant's San Bernardino residence since 1986.

At the time of his LIFE interview on June 21, 2004, the applicant was given a Form I-72, which requested that the applicant submit evidence of his residence in the United States since 1981, specifically, a Department of Motor Vehicles printout, lease agreement, proof of employment, IRS record and a printout of his earnings from the Social Security Administration. The applicant, in response submitted several rent receipts for premises at [REDACTED] from 1980 and 1981, and a notarized affidavit from [REDACTED], of San Bernardino, California, who indicated that the applicant resided in his house and worked as his helper in landscape from February 1982 to December 1985.

On September 30, 2005, the director issued a Notice of Intent to Deny, which advised the applicant that at the time of his LIFE interview, he indicated that he did not enter the United States prior to January 1, 1982. The applicant was advised that based on this admission and the lack of evidence to substantiate the affidavits submitted, the applicant had failed to establish continuous residence in the United States. The applicant was advised that he had failed to submit any of the requested documents outlined in the Form I-72 and that records reflect that he had a son born in Mexico on July 31, 1984.

The applicant was also advised of his statement made at the time of his initial interview indicating that he first entered the United States on February 20, 1984. It is noted that according to the interviewing officer's notes at the time of the LIFE interview, the applicant indicated that he misunderstood the question he was asked in December 1994 as he claimed to have entered the United States in 1980.

Counsel, in response, submitted a photocopy of the affidavit from [REDACTED] that was previously provided. The photocopied affidavit, however, was neither signed by the affiant nor notarized.

The director, in denying the application, noted that the photocopied affidavit from [REDACTED] could not be considered as credible evidence as it was neither signed by the affiant nor notarized. The director concluded that the applicant had 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.

On appeal, counsel submits a copy of the signed and notarized affidavit of [REDACTED]

The U.S. Citizenship and Immigration Services (USCIS) has determined that affidavits from third party individuals may be considered as evidence of continuous residence. *See Matter of E-- M--*, supra. In ascertaining the evidentiary weight of such affidavits, USCIS must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E-- M--*, supra, the affidavits would not necessarily be fatal to the applicant's claim, if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony provided. The statements issued by the applicant have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through May 4, 1988, as he has presented contradictory and inconsistent documents, which undermines his credibility. Specifically:

1. [REDACTED] indicated that the applicant resided in his home and was in his employ from February 1982 to December 1985. The applicant, however, did not claim on his Form I-687 application to have been employed by this affiant; the only employment claimed on the Form I-687 commenced in 1986 in Texas.
2. [REDACTED] in his affidavit, attested to the applicant's employment since 1986, but failed to include the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the affiant also failed to 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
3. [REDACTED] in her affidavit, attested to the applicant's residence in San Bernardino, California since 1986, but failed to provide any details regarding the nature of her relationship with the applicant or the basis for her continuing awareness of the applicant's residence. 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.

4. The rent receipts raise questions to their authenticity as the applicant did not claim residence at this address on his Form I-687 application.
5. The applicant claimed to have son born in Mexico on July 31, 1984, but he only claimed one absence from the United States in 1987 on his Form I-687 application.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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 regulation at 8 C.F.R. § 245a.12(e) provides that “[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods.” Preponderance of the evidence is defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black’s Law Dictionary 1064 (5<sup>th</sup> ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991). Given the credibility issues arising from the documentation provided by the applicant, it is determined that the applicant has not met his burden of proof. 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.

The second issue is whether the applicant had established that he satisfied 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 applicants who are at least 65 years of age or who are developmentally disabled. *See* 8 C.F.R. § 245a.17(c).

An applicant may establish that he or she has met the requirements of section 312(a) of the Immigration and Nationality Act (Act) by demonstrating an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language and by demonstrating a knowledge and understanding of the fundamentals of the history and of the principles and form of government of the United States. 8 C.F.R. § 245a.17(a)(1) and 8 C.F.R. §§ 312.1 – 312.3.

An applicant may also establish that he or she has met the requirements of section 1104(c)(2)(E)(i) of the LIFE Act by providing a high school diploma or general educational development diploma (GED) from a school in the United States. 8 C.F.R. § 245a.17(a)(2). The high school or GED diploma may be submitted either at the time of filing the Form I-485 LIFE Act application, subsequent to filing the application but prior to the interview, or at the time of the interview. *Id.*

Finally, an applicant may also establish that he or she has met the requirements of section 1104(c)(2)(E)(i) of the LIFE Act by establishing that:

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. The applicant may submit certification on letterhead stationery from a state recognized, accredited learning institution 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 (the applicant's name and A-number must appear on any such evidence submitted).

8 C.F.R. § 245a.17(a)(3).

An applicant who fails to pass the English literacy and/or the United States history and government tests at the time of the initial LIFE interview shall be afforded a second opportunity after six months (or earlier at the request of the applicant) to pass the required tests or to submit the evidence described above. 8 C.F.R. § 245a.17(b).

The record reflects that the applicant was interviewed in connection with his LIFE application, on June 21, 2004. On this occasion, the applicant failed to demonstrate a minimal understanding of English and minimal knowledge of United States history and government. The applicant was given a second opportunity to take the English literacy and/or the United States history and government tests on January 11, 2005. The applicant, however, failed to appear. Furthermore, the applicant has not provided evidence of having passed a standardized citizenship test, as permitted by 8 C.F.R. § 312.3(a)(1).

On September 30, 2005, the director issued a Notice of Intent to Deny, which advised the applicant of his failure to pass the English literacy and United States history and government tests and of his failure to appear for a second interview. The applicant was given the opportunity to submit

evidence that would overcome the basis for denial of his application. This issue, however, was not addressed in counsel's response.

Counsel, on appeal, asserts, "[the applicant] is also submitting an affidavit attesting that he is as of this month of January, 2008 about to enroll in ESL Adult Education courses with the Jordan School District, located in Sandy, Utah...." Counsel submits documentation outlining the applicant's schedule from Horizonte Instruction and Training Center, Salt Lake City School District.

Counsel, however, cites no statute or regulation that compels the director to schedule the applicant for a third interview. The regulation only provides *one* opportunity after the failure of the first test. 8 C.F.R. § 245a.17(b).

The documentation from the Horizonte Instruction and Training Center does not provide any confirmation that it is "a state recognized, accredited learning institution," and has a course content that includes any instruction on United States history and government as required by 8 C.F.R. § 245a.17(a)(3). Furthermore, 8 C.F.R. § 245a.17(a)(3) requires that the applicant submit certification on letterhead stationery from a state recognized, accredited learning institution either at the time of filing the Form I-485, subsequent to filing the application but prior to the interview, or at the time of the interview. In the instant case, documentation from a state recognized, accredited learning institution should have been submitted to USCIS prior to or at the time of the applicant's second interview on January 11, 2005. Assuming, *arguendo*, the organization is a state recognized, accredited learning institution, the applicant still would not qualify for the benefit being sought as the document was presented subsequent to the applicant's interview.

As previously discussed, the applicant failed to meet the "basic citizenship skills" requirement of section 1104(c)(2)(E)(i)(I) of the LIFE Act because at his interview he did not demonstrate a minimal understanding of the English language and minimal knowledge of United States history and government.

Therefore, the applicant does not satisfy either alternative of the "basic citizenship skills" requirement set forth in section 1104(c)(2)(E)(i) of the LIFE Act. Accordingly, the applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for dismissal.

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