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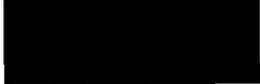
U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEW YORK CITY

Date:

JAN - 5 2009

consolidated herein]
MSC 02 229 61018

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 H. Vaughan
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 New York City. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant 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.

On appeal the applicant asserts that he has submitted sufficient documentation to establish his eligibility for LIFE legalization.

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 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 applicant, a native of Colombia who claims to have lived in the United States since May 1980, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on May 17, 2002.

In a Notice of Intent to Deny (NOID), dated August 4, 2007, the director indicated that the applicant had not submitted credible evidence to establish that he entered the United States before January 1, 1982, and resided continuously in the country in an unlawful status through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

Counsel submitted a timely response to the NOID with a personal affidavit from the applicant as well as three additional affidavits from acquaintances.

On September 15, 2007, the director issued a Notice of Decision denying the application on the ground that the information and documentation submitted in response to the NOID were insufficient to overcome the grounds for denial.

On appeal, counsel asserts that the evidence of record is sufficient to establish that the applicant met the continuous residence requirement for LIFE legalization. Counsel submits copies of documentation already in the record.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate 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. The AAO determines that he has not.

At his LIFE legalization interview on July 8, 2004, the applicant signed a sworn statement in which he acknowledged: (1) that he traveled to Colombia in October 1982 and returned to the United States in January 1983, (2) that he traveled to Colombia in October 1984 and returned to the United States in December 1985, and (3) that he was arrested by United States Border Patrol agents in December 1985, in San Ysidro, California. United States Citizenship and Immigration Services (USCIS) records confirm that the applicant was arrested on December 1, 1985, after his illegal entry. The foregoing statement completely undermines the applicant's claim that he entered the United States before January 1, 1982 and resided continuously in the country through May 4, 1988.

The absences from the United States listed as (1) and (2) above far exceeded the 45-day maximum for a single absence, and the 180-day aggregate maximum for all absences, prescribed in the regulation at 8 C.F.R. § 245a.15(c)(1). Absences of such duration interrupt 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 explained with regard to either of his absences what sort of "emergent reasons" prevented his return to the United States within 45 days.

Based on the evidence in the record, the AAO concludes that the applicant has failed to establish that emergent reasons, within the meaning of 8 C.F.R. § 245a.15(c)(1), prevented his return(s) to the United States from Colombia within the 45-day period allowed in the regulation following his initial departure for Colombia in October 1982 or following his second departure for Colombia in October 1984.

Thus, the applicant has failed to establish that he 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, 8 U.S.C. § 245A(a)(2)(A). Accordingly, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

The AAO also notes that on a Form I-687 (Application for Status as a Temporary Resident) he filed in January 1990 the applicant stated that he entered the United States in May 1980 and left the country only once in the 1980s – from July 2 to July 30, 1987 – to visit his family in Colombia. The applicant listed the following residential addresses and employers in the 1980s on his Form I-687:

Residences:

- [REDACTED], Astoria, New York, from June 1981 to April 1984; and
- [REDACTED], Astoria, New York, from May 1984 to January 1989.

Employers:

- Astoria Furniture Company in Astoria, New York, from June 1981 to July 1985; and
- Ideal Interiors in Astoria, New York, from July 1985 to the present (1990).

The file also contains a Form I-589 (Request for Asylum in the United States) filed by the applicant on August 11, 1993. On that form, and his accompanying Form G-325A (Biographic Information), the applicant stated that he entered the United States on May 25, 1985 and listed the following addresses since his birth in 1950:

Residences:

- [REDACTED], Palmira, Colombia, from November 1950 to May 1985.
- [REDACTED], Corona, New York, from May 1985 to the present (1993); and

On his Form G-325A the applicant described his employment over the past five years (back to 1988) as “domestic” without identifying a specific employer.

Thus, the forms filed by the applicant in 1990 and 1993 contain contradictory information about (1) his initial date of entry into the United States, (2) his residential addresses during the 1980s, and (3) his employment during the 1980s.

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.*

The information provided by the applicant in his interview for LIFE legalization and sworn statement in 2004 accords with the applicant's Form I-687 with respect to his claim of initial entry into the United States in May 1980 and the acknowledgement of his arrest when he re-entered the country in December 1985. The additional information about the applicant's absence from the United States in the years 1982 to 1985, however, had not previously been acknowledged.

In view of the myriad conflicting information provided by the applicant, and his acknowledgement of extended trips to Colombia that interrupted his continuous residence in the United States during the requisite period for LIFE legalization, 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.