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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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Services

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[REDACTED]

FILE:

MSC 02 052 63683

Office: LOS ANGELES

Date: JUL 24 2009

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:

[REDACTED]

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, Los Angeles, on November 21, 2005, and an appeal was filed before the Administrative Appeals Office (AAO). The director denied the application because the applicant admitted to the district adjudications officer at the time of his interview that he had used cocaine in the past. The director concluded that the applicant was not eligible for permanent resident status under the LIFE Act because of this admission of prior drug use.

The applicant filed a timely Notice of Appeal (form I-290) and is represented by counsel on appeal. Counsel asserts that the applicant's admission of prior drug use during the interview cannot be considered as a ground of inadmissibility because at the time of the interview, the applicant was not informed of the elements of the crime to which he allegedly admitted, or that such an admission would render him ineligible for permanent resident status.

The AAO has reviewed all of the statements and evidence in the file, as well as the applicable criminal statute and controlling authority of the Ninth Circuit Court of Appeals, the jurisdiction in which this case arises. We find that the applicant's admission of prior drug use made to the adjudications officer at the time of his interview for permanent resident status is not an admission against admissibility because the record does not establish that the applicant was informed of the elements of the criminal statute regarding controlled substances. Therefore, the applicant's statement of prior cocaine use may not be considered as a ground of inadmissibility. *See Pazcoguin v. Radcliffe*, 292 F.3d 1209 (9th Cir. 2002). In this case, the court ruled that three requirements must be met in order for statements involving criminal activity to be considered as grounds of inadmissibility: 1) the admitted conduct must constitute the essential elements of a crime, 2) the applicant must have been provided with a definition of the essential elements of the offense prior to his admission, and 3) the admission must be voluntary. *See also Matter of K*, 7 I&N Dec. 594, 498 (BIA 1957). In the present matter, these requirements were not met.

Our further review of the record indicates that the applicant is unable to meet one of the grounds of eligibility for permanent residence, *i.e.*, a working knowledge of English and United States government. However, the applicant meets the eligibility requirements for temporary resident status under 8 C.F.R. § 245a.6, and the application will be approved on that basis.

Section 1104(c)(2)(B) of the LIFE Act states:

- (i) In General – 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. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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. Likewise, but for the requirement to pass an English/U. S. government exam, an applicant for temporary residence must meet identical requirements.

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 applicant has the burden of proving 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 under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. 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.2(d)(5). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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 since 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).

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.* at 80. 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 petitioner 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 petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (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 or petition.

The issue in this proceeding is whether the applicant (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The AAO concludes that, upon review of all of the evidence of residence, the applicant's claim is more likely true than not. *U.S. v. Cardozo-Fonseca. Id.*

The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period includes a Social Security earnings statement from 1982 to 2002, photocopies of federal tax returns for 1981 through 1989, and pay stubs for 1982 through 1990.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. The documents in the file establish that it is more likely than not that the applicant's claim of continuous unlawful residence for the requisite period is true.

An alien applying for adjustment of status under the provisions of section 1140 of the LIFE Act has the burden of proving by a preponderance of evidence that he or she has continuously resided in an unlawful status in the United States from January 1, 1982 to May 4, 1988, is admissible to the United States under the provisions of section 212(a) of the INA, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.11.

In the event that an applicant has not established eligibility for adjustment of status pursuant to the terms of the LIFE Act, federal regulations require that the adjudicating officer shall consider whether the eligible alien has established eligibility for adjustment to temporary resident status under section 245A of the Act, as in effect before enactment of section 1140 of the LIFE Act. Federal regulations state further that if the eligible alien has established eligibility for adjustment to temporary resident status, the LIFE Legalization application shall be deemed converted to an application for temporary residence. 8 C.F.R. § 245a.6. The applicant has met this burden, and the application for temporary residence will be granted.

ORDER: The appeal is sustained. The director shall continue adjudication of the application.