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U.S. Citizenship
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FILE: [Redacted]
MSC 02 204 62644

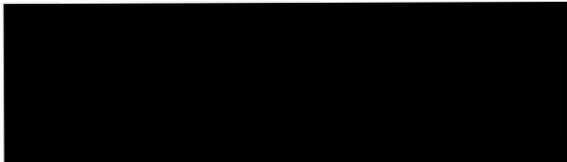
Office: CALIFORNIA SERVICE CENTER

Date: **MAR 04 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:



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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

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, California Service Center, and 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 demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

On appeal, counsel for the applicant asserts that the applicant has established his eligibility for adjustment of status under the LIFE Act. Counsel submits a brief and additional evidence on appeal.

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. 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.

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.

In the Notice of Intent to Deny (NOID) / Request for Evidence, the director requested that the applicant submit sufficient evidence demonstrating his entry into the United States before January 1, 1982 and his continuous unlawful residence in the United States during the requisite period. The director granted the applicant thirty (30) days to submit additional evidence.

In response to the NOID/RFE, counsel for the applicant submitted affidavits from [REDACTED] and [REDACTED]. Mr. [REDACTED] states that the applicant has been living in the United States since 1981. Mr. [REDACTED] attests that he has known the applicant since 1998.

In the Notice of Decision, dated November 1, 2006, the director denied the instant application because the applicant failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988. The director noted that the applicant failed to submit sufficient evidence to establish the requisite continuous residence.

On appeal, the applicant's attorney states that the applicant entered the United States in January 1981 with a visitor's visa, with authorization to stay for six months; overstayed his visa and remained in the United States in unlawful status; and, in 1983 the applicant departed the United States for Brazil and remained there until 1986 in order to help with the care of his sick child. Counsel states further that throughout this absence, the applicant was temporarily in Brazil, and considered the United States his place of residence. Counsel referenced letters from [REDACTED], dated October 18, 1994, and [REDACTED], dated October 19, 1994, in support of his assertion that the applicant prolonged absence was for "emergent" reasons.

The regulation at 8 C.F.R. § 245a.15(c)(1) provides that 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.

The applicant cannot establish that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as the applicant had exceeded the forty-five (45) day limit for a single absence and the aggregate of all absences of one hundred and eighty (180) days from the United States during this period, as set forth in 8 C.F.R. § 245a.15(c)(1)(i).

By his own admission, the applicant departed the United States from 1983 until 1986 (an absence of three years). The applicant states that the absence was due to emergent reasons to care for his daughter who was ill, and to visit his son.

The applicant has failed to provide any documentation that his prolonged absence, exceeding 180 days, was due to emergent reasons, or that his return to the United States could not be accomplished within the time period allowed. The applicant submitted a letter from [REDACTED] dated October 18, 1994, stating that the applicant's daughter [REDACTED] suffered from "Chronic and serious rheumatoid arthritis, with signs of intense osteoporosis and fractured humerus [and is] under treatment;" and, a letter from [REDACTED] dated October 19, 1994, stating that [REDACTED] has, at the present moment, a fractured humerus and serious chronic rheumatologic arthritis symptomatology." However, there is no documentation to establish that the applicant's prolonged absence of three years from 1983 to 1986 was necessitated due to his daughter's illness. Moreover, there is no indication from [REDACTED] or [REDACTED], that [REDACTED] was under medical treatment during the period from 1983 through 1986.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, he is 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.