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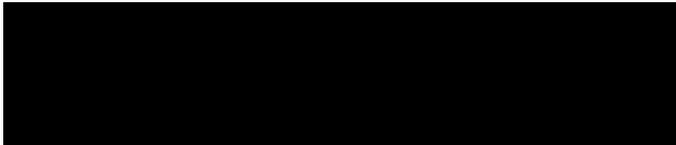
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



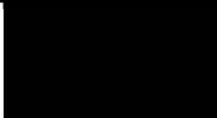
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FILE:



Office: LOS ANGELES
- consolidated herein]
- consolidated herein]

Date:

MAY 22 2009

MSC 02 037 60436
MSC 07 055 10750 - APPEAL

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.

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 Los Angeles, California. The decision is now before the Administrative Appeals Office (AAO) on appeal. 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, counsel asserts that the applicant has submitted sufficient credible evidence to establish that he entered the United States before January 1, 1982, and that he resided continuously in the United States in an unlawful status during the requisite period 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 Mexico who claims to have lived in the United States since January 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on November 6, 2001.

In a Notice of Intent to Deny (NOID), dated September 7, 2006, the director indicated that the applicant had not submitted sufficient credible evidence to establish his claim. The director indicated that the applicant’s claim to have entered the United States before January 1, 1982 is contradicted by other documentation in the record in which the applicant indicated different dates of entry into the United States. The applicant was granted 30 days to submit additional evidence.

The applicant timely filed a response to the NOID with explanations for some of the evidentiary deficiencies cited in the NOID and submitted copies of documents previously in the record. On October 12, 2006, the director issued a decision denying the application on the ground that the response to the NOID was insufficient to overcome the grounds for denial.

On appeal, counsel asserts that the applicant has submitted sufficient credible evidence to establish that he entered the United States before January 1, 1982, and that he resided continuously in the

United States in an unlawful status for the requisite period for LIFE legalization. Counsel submits no additional documentation with the appeal.

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.

The documentation submitted by the applicant in support of his claim that he was continuously resident in the United States during the requisite period for LIFE legalization consists of a series of letters and affidavits from individuals who claim to have employed, resided with or otherwise known the applicant in the United States during the 1980s. The AAO has reviewed each document in its entirety to determine the applicant's eligibility. Here the submitted documentation is not probative or credible.

The applicant's claim that he entered the United States before January 1, 1982, and resided continuously in the country in an unlawful status during the requisite period for legalization under the LIFE Act, is contradicted by documentation in the record. The applicant stated on the Form I-485 he filed in November 2001, that he has a son born in Mexico on March 26, 1986. The record reflects that on the Form I-687 (application for status as a temporary resident) dated June 30, 1993, the applicant stated that he entered the United States in January 1981, and that he made just one trip to Mexico during the 1980s – from June to July 1987. The applicant indicated that he has two children born in Mexico, but did not specify the dates of birth of the children. The record reflects that the applicant's son was born on March 26, 1986 and his daughter was born on March 30, 1989 (outside the requisite period). The applicant did not indicate any other absences from the United States during the 1980s. The applicant did not indicate any trip to Mexico in 1985, which would have accounted for the conception and birth of his son in March 1986. Thus, the information noted above, strongly suggest that the applicant was in Mexico at least some time in 1985 when his son was conceived. There is no evidence in the record to establish that the applicant's spouse was residing in the United States during the 1980s. The apparent omissions of the dates of birth of the applicant's children on the Form I-687 and the contradiction in the record regarding the applicant's continuous residence in the United States during the 1980s, cast considerable doubt on the veracity of the applicant's claim that he entered the United States before January 1, 1982, and resided continuously in the country through the requisite period for legalization under the LIFE Act.

The record further reflects that the applicant filed a Form I-589 (application for asylum) in April 1997, and was interviewed at the asylum office on May 13, 1997. On that form and at the

interview, the applicant stated that he entered the United States in April 1984. At his deportation proceedings on June 27, 1997, the applicant admitted under oath before the Immigration Judge that he entered the United States in 1984. The applicant was represented at the hearing by counsel. The applicant did not indicate a prior entry into the United States at that hearing. On the Form I-140 (Immigrant Petition For Alien Worker) filed on the applicant's behalf on June 3, 2002, the applicant indicated that he arrived in the United States in July 1987. Again, the applicant did not indicate any prior entry or residence in the United States before July 1987. The applicant has presented three different entry dates into the United States (1981, 1984 and 1987).

In the NOID dated September 7, 2006, the director notified the applicant of the contradictions and granted him the opportunity to provide rebuttal information to explain or justify the contradictions. The applicant failed to provide objective evidence to reconcile or explain the discrepancies. 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. *See 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.*

As noted above, the applicant has provided contradictory information and statements in support of his application. The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Therefore, the credibility and reliability of the remaining evidence – consisting of letters and affidavits from individuals who claim to have employed, resided with, or otherwise known the applicant in the United States during the 1980s is suspect and it must be concluded that the applicant has failed to establish that he continuously resided in the United States during the requisite period for legalization under the LIFE Act.

For example, the affidavit from [REDACTED] dated July 1, 1993, only attested to the fact that the applicant traveled to Mexico in 1987. [REDACTED] did not provide any information about the applicant's residence in the United States during the 1980s. The affidavits and letters of employment from [REDACTED] and [REDACTED] do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i). The employment documentation were not written on the company letterheads, did not provide the applicant's address(es) during the period of employment, did not indicate whether the information about the applicant's employment was taken from company records, and did not indicate whether such records are available for review. Nor were the letter and affidavits supplemented by earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed during any of the years indicated. Thus, the letter and affidavits of employment have limited probative value. They are not persuasive evidence that the applicant resided in the United States from before January 1, 1982 through May 4, 1988 as required for legalization under the LIFE Act.

Based on the foregoing analysis of the evidence, 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). 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.