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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

U.S. Citizenship and Immigration Services

L2

[redacted]

FILE: [redacted] Office: NEW YORK Date: APR 0 6 2010

MSC 02 204 63809

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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988 as required by section 1104(c)(2)(B) of the LIFE Act. In addition, the director determined that the applicant had not established that he was continuously physically present in the United States from November 6, 1986 to May 4, 1988 because he admitted that he was absent from this country when he traveled to Canada from August 14, 1987 to September 29, 1987, and such absence could not be considered brief, casual, and innocent. Therefore, the director concluded that the applicant was ineligible to adjust to permanent residence under the provisions of the LIFE Act and denied the application.

On appeal, counsel reiterates the applicant's claim of residence in this country for the required period and asserts that the applicant had submitted sufficient evidence to demonstrate such claim. Counsel requests a copy of the record of proceedings and indicated a brief would be forthcoming within thirty days of compliance with this request.

The record shows that United States and Citizenship and Immigration Services or USCIS (formerly the Immigration and Naturalization Service or the Service) complied with counsel's request with Control Number NRC2008003939 and mailed a copy of the record to counsel on April 30, 2009. The brief subsequently submitted by counsel has been incorporated into the applicant's appeal.

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).

An applicant for permanent resident status must establish continuous physical presence in the United States in the period beginning on November 6, 1986 and ending on May 4, 1988. Section 1104(c)(2)(C) of the LIFE Act and 8 C.F.R. § 245a.11(c).

"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.

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).

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 to May 4, 1988, the submission of any other relevant document including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

While the regulation at 8 C.F.R. § 245a.16(a) states that evidence establishing an applicant's continuous physical presence may consist of documentation issued by any governmental or nongovernmental authority, the regulation cited in the previous paragraph at 8 C.F.R. § 245a.2(d)(3)(vi)(L) must be considered to permit the submission of any other relevant document including affidavits to support a claim of continuous physical presence in the United States from November 6, 1986 to May 4, 1988.

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 regulation at 8 C.F.R. § 245a.2(d)(3)(v) states that attestations by churches, unions, or other organizations to the applicant's residence by letter must: identify applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

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. *Id.*

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 first issue to be determined in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Act, on May 10, 1990. With the Form I-687 application, the applicant included a "Form for Determination of Class Membership in CSS v. Meese" in which he testified that he departed the United States on August 14, 1987 to travel to Canada and that he subsequently reentered this country without inspection on September 29, 1987.

Subsequently, the applicant filed his Form I-485 LIFE Act application on April 22, 2002. The record shows that the applicant was interviewed regarding his Form I-485 LIFE Act application at the USCIS office in New York, New York, on July 19, 2004. The notes of the interviewing officer reflect that the applicant testified under oath that he departed the United States on August 14, 1987 to travel to Canada and that he returned to this country on September 29, 1987. The applicant's own testimony on the class membership determination form and at his interview on July 19, 2004 reflected that he was absent from the United States for forty-six days from August 14, 1987 to September 29, 1987 and, therefore such absence exceeded the forty-five day limit for a single absence from the United States during this period, as set forth in 8 C.F.R. § 245a.15(c)(1)(i). Consequently, the applicant cannot be considered to have continuously resided in the United States for the requisite period pursuant to 8 C.F.R. § 245a.11(b), because his absence exceeded the forty-five day limit for a single absence.

In support of his claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted two photocopied American Express cards issued in 1987 and 1988 bearing variations of his full name. However, the probative value of these credit cards is minimal as the applicant failed to include any corresponding documents such as bills in his name mailed to an address in the United States.

The applicant provided affidavits that are signed by [redacted], and [redacted]. Although all of these affiants attested to the applicant's residence in the United States for the period in question or a portion thereof, their testimony was general and vague and lacked sufficient details and verifiable information to corroborate the applicant's residence in this country for the requisite period.

The applicant included an affidavit signed by who declared that the applicant had been absent from the United States when he traveled to Canada from August 14, 1987 to September 29, 1987. testimony only serves to confirm that the applicant exceeded the forty-five day limit for a single absence set forth in 8 C.F.R. § 245a.15(c)(1)(i) when he was absent from this country for forty-six days from August 14, 1987 to September 29, 1987.

The applicant submitted an affidavit that is signed by . Mr. stated that the applicant traveled to Canada to attend a wedding ceremony and visited him in August 1987. noted that the applicant subsequently became sick causing him to extend his stay in Canada.

Although both and attested to the applicant's absence from this country in 1987, neither affiant provided any other testimony relating to the applicant's residence in the United States for the requisite period.

The applicant provided employment letters that are signed by and , both of New York, New York. declared that he employed the applicant as an assistant phlebotomist for $210.00 per week from July 8, 1983 to July 28, 1985. noted that he employed the applicant as a phlebotomist from August 2, 1985 to August 7, 1988. However, neither nor provided the applicant's address of residence during that period each employed the applicant or relevant information relating to the availability of business records reflecting the applicant's employment as required by 8 C.F.R. § 245a.2(d)(3)(i).

The director determined that the applicant failed to submit sufficient evidence demonstrating his residence in the United States in an unlawful status for the requisite period. Therefore, the director concluded that the applicant was ineligible to adjust to permanent residence and denied the Form I-485 LIFE Act application on August 6, 2007.

On appeal, counsel asserts that the applicant has submitted sufficient evidence to support his claim of residence in this country for the requisite period. Counsel declares that the director utilized an improper evidentiary standard to evaluate the applicant's supporting documents. Counsel objects to the director's failure to contact affiants who had provided supporting documents in order to verify their testimony. However, as has been discussed above, the record is absent supporting documents containing specific and verifiable testimony to substantiate the applicant's residence in this country from prior to January 1, 1982. Even if director utilized a higher evidentiary standard to adjudicate the instant application, it is harmless error because the AAO conducts a de novo review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility and making a determination based upon a preponderance of the evidence as required by the regulations at 8 C.F.R. § 245a.2(d)(5) and 8 C.F.R. § 245a.12(e), as well as the precedent decision reached in *Matter of E-- M--*, 20 I. & N. Dec. 77 (Comm. 1989). Counsel fails to put forth any compelling reason that would warrant the verification of

documentation that provides neither extensive nor credible information to corroborate the applicant's claim of residence.

The absence of sufficiently detailed supporting documentation and the applicant's own admission that he was absent from this country for forty-six days from August 14, 1987 to September 29, 1987 seriously undermines the credibility of the applicant's claim of residence in this country for the requisite period, as well as the credibility of the documents submitted in support of such claim. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he has resided in the United States for the requisite period by a preponderance of the evidence as required under both 8 C.F.R. § 245a.12(e) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's reliance upon documents with minimal or no probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988 as required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis.

The next issue to be examined in this proceeding is whether the applicant's continuous physical presence in United States was broken as result of his admitted absence from this country when he traveled to Canada in 1987 because such absence could not be considered brief, casual, and innocent.

The statute at section 1104(c)(2)(C)(i)(I) of the LIFE Act reads in pertinent part as follows:

> [A]n alien shall not be considered to have failed to maintain continuous physical presence in the United States for purposes of this subparagraph by virtue of brief, casual, and innocent absences from the United States. . . .

The regulation at 8 C.F.R. § 245a.16(b) reads as follows:

> For purposes of this section, 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. Also, brief, casual, and innocent absences from the United States are not limited to absences with advance parole. Brief, 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.

The applicant has consistently claimed throughout these proceedings that he was absent from the United States for forty-six days from August 14, 1987 to September 29, 1987 when he traveled

to Canada. Pursuant to 8 C.F.R. § 245a.16(b), the AAO finds that the applicant's absence from the United States in this case was not temporary or occasional in that the applicant himself acknowledged that he was absent from the United States for more than forty-five days.[1]

Thus, the applicant failed to establish that he was continuously physical present in the United States in the period beginning on November 6, 1986 and ending on May 4, 1988 as required by 8 C.F.R. § 245a.11(c), and, therefore, is ineligible to adjust permanent resident status under the provisions of the LIFE Act on this basis as well.

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

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[1] The regulation implementing the statutory requirement of "continuous unlawful residence" in the United States defines that term as no single absence from the United States exceeding 45 days and absences in the aggregate not exceeding 180 days. See, 8 C.F.R. § 245a.15(c)(1). The term "continuous physical presence" suggests that a shorter time frame should be applied to determine the permissible length of single and aggregate absences from the United States during the period from November 6, 1986 to May 4, 1988.