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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



FILE: [REDACTED]
MSC 02 011 62676

Office: MIAMI

Date: **AUG 05 2010**

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. 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, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because 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.

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 in support of such claim. Counsel includes copies of previously submitted documentation in support of the 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).

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).

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing his 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 June 24, 1991. The applicant also included an Affidavit for Determination of Class Membership in League of United Latin American Citizens v. INS. At parts #22 to #30 of the Form I-687 application and questions #7 through #9 of the class membership determination form the applicant testified that he first entered the country at Miami, Florida with a B-2 visitor’s visa on May 23, 1981 and that he remained in the United States beyond his period of authorized stay. However, a review of the record reveals that the applicant provided no evidence such as his passport or a Form I-94, Arrival-Departure Record, which would substantiate the applicant’s claim that he arrived in the United States in this manner and on this date. Further, a review of the electronic record reveals no indication that the applicant entered the country at Miami, Florida with a B-2 visitor’s visa on May 23, 1981.

Subsequently, the applicant filed his Form I-485 LIFE Act application on October 11, 2001.

In support of his claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted affidavits signed by [REDACTED]. While 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 two separate completion certificates from the Brookline Adult and Community Education Program. The first certificate shows that the applicant successfully completed a forty hour course in “Beginning English” during the period from September 26, 1983 to November 10, 1983. The second certificate shows that the applicant successfully completed a forty hour course in “ESL Intermediat I” during the period from March 4, 1984 to May 3, 1984. However, the probative value of these two certificates is minimal as the documents are not accompanied by corresponding school records or transcripts. Further, the authenticity of the second completion certificate is questionable as a portion of the name of the course, “ESL Intermediat I,” is misspelled.

The applicant provided six photocopied receipts dated March 1, 1986, April 1, 1986, May 1, 1986, June 30, 1986, February 28, 1987, and April 1, 1987 reflecting his payment of \$250.00 in

rent for a studio apartment at [REDACTED] Brighton, Massachusetts. The applicant also submitted a retail receipt reflecting his purchase and return of items at [REDACTED] in Boston, Massachusetts on July 10, 1987. Nevertheless, the probative value of these receipts is limited as all information pertaining to the applicant in these receipts is handwritten.

The applicant included numerous photocopied photographs that depict him in a variety of locations in the Boston, Massachusetts area and claimed that these photocopied photographs were taken throughout the period in question. Regardless, the photocopied photographs have no probative value as the dates the photographs were taken cannot be determined.

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 February 1, 2005.

On appeal, counsel reiterates the applicant's claim of residence in this country for the required period and asserts that the applicant submitted sufficient evidence to support such claim. However, as has been discussed above, the record contains no evidence to support the applicant's claim that he first entered the country at Miami, Florida with a B-2 visitor's visa on May 23, 1981, and that he remained in the United States beyond his period of authorized stay. In addition, the record is absent credible supporting documents containing specific and verifiable testimony to substantiate the applicant's residence in this country from prior to January 1, 1982.

The absence of sufficiently detailed supporting documentation 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.

Although not noted by the director, the applicant filed a Form I-690, Application for Waiver of Grounds of Excludability (now referred to as inadmissibility), noting that he believed that he was inadmissible under section 212(a)(19) of the Immigration and Nationality Act (Act) as an alien who by fraud or material misrepresentation procured admission into the United States (subsequently amended to section 212(a)(6)(C)(i) of the Act). However, the record contains no evidence or finding

that the applicant committed any act that would render him inadmissible under this particular ground. While this basis of inadmissibility is waivable, the applicant has failed to establish his eligibility for permanent resident status.

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