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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

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FILE:

Office: NEWARK

Date: FEB 07 2011

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.

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, Newark, New Jersey and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application based on the determination that the applicant was ineligible to adjust to permanent resident status under the provisions of the LIFE Act. The director found that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. Specifically, the director noted that the applicant submitted several affidavits which lacked sufficient detail to be considered probative and that the applicant submitted inconsistent testimony regarding his absences during the relevant period.

On appeal, through counsel, the applicant indicates that the director's decision was not supported by the evidence. The applicant indicates that the director failed to state the law upon which the decision is based and that the applicant was not considered for eligibility for temporary resident status under 8 C.F.R. § 245a.6.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Following *de novo* review, the AAO finds that the applicant has failed to establish his continuous residence in the United States from January 1, 1982 through the end of the relevant period.

An applicant for permanent resident status 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 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 under the provisions of section 212(a) of the 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 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. 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 “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 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 (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 has established that he (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 documentation contained in the record which pertains to the relevant period consists of the following:

- Affidavits from [REDACTED] Although the affiants state that they met the applicant during the relevant period, their statements do not supply enough details to be considered probative. Specifically, all of the affiants indicate that they met the applicant during the relevant period, however, none indicate how they date their initial acquaintance with the applicant, or how frequently they saw the applicant during the relevant period. Furthermore, as noted by the director, none of the affiants have provided evidence of their residence in the United States during the relevant period.
- An affidavit from [REDACTED] indicating that the applicant attended services [REDACTED] and that she became a member of the congregation in March 1982. She does not address the period following March 1982. This letter does not conform to the statutory requirements for attestations by churches, unions, or other organizations, which is found at 8 C.F.R. § 245a.2 ((d)(3)(v)). That regulation requires such attestations to “show the inclusive dates of membership and state the address where the applicant resided during the membership period.” Pastor Bush does not provide dates of the applicant’s membership or any other information that is probative of the issue of her continuous residence in the United States after March 1982. Thus, it can be given no probative weight.

- A letter from [REDACTED] indicating that the applicant worked as a home care attendant at [REDACTED] for a few weeks in November 1981. This letter fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant's address at the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether USCIS may have access to the records; if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer's willingness to come forward and give testimony if requested. The statement by [REDACTED] does not include much of the required information and can be afforded minimal weight as evidence of the applicant's residence in the United States for the duration of the requisite period. Even if the letter were in conformity to the cited regulation, it merely provides evidence of the applicant's presence in the United States prior to the relevant period.
- A letter from [REDACTED] indicating that the applicant traveled to Canada in June 1987 and returned a few weeks later.
- A Kings County Hospital emergency room record of visit on October 30, 1984. As noted by the director, this letter establishes the applicant's presence in the United States on October 30, 1984. USCIS records indicate that she departed the United States on November 4, 1984.

To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

As stated by the director, the applicant entered the United States on July 19, 1987 and has submitted sufficient evidence of her residence in the United States from that date until the end of the relevant period. However, the evidence submitted which concerns the period prior to July 19, 1987 is not sufficient to establish the applicant's eligibility for the benefit sought.

It is further noted that the USCIS records indicate that the applicant entered the United States on October 10, 1984 and departed on November 4, 1984. Records then indicate that she entered the United States on August 17, 1985 and again on August 24, 1986 departing on October 5, 1986. Service records then indicate her entrance to the United States on July 19, 1987. Each of these absences exceeds the 45 day limit for a single absence.

The applicant shall be regarded as having resided continuously in the United States if at the time the application for permanent resident status is filed, no single absence from the United States has

exceeded 45 days, and the aggregate of all absences has not exceeded 180 days during the requisite period unless the applicant can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the applicant was maintaining a residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.15(c).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that "emergent" means "coming unexpectedly into being."

The applicant was notified on July 28, 2003 via Form I-797 that USCIS records indicated the noted absences. The applicant failed to address this issue. Again in the Notice of Intent to Deny (NOID) and in the Notice of Denial (NOD) the director noted the absences. The applicant has never addressed these absences. She is therefore, ineligible for benefits under the LIFE Act.

As is stated above, 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). The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3).

It is also noted that the applicant submitted inconsistent information regarding her absences from the United States. On her Form I-687, the applicant indicated that he traveled outside of the United States in October 1982 and October 1988. However, on his G-325A and the Form I-485, the applicant indicates that she was married in Trinidad on December 15, 1985. The applicant's passport was issued in Trinidad in November 1982 and contains only one entry stamp, in December 1988. These inconsistencies have not been resolved by the applicant.

Finally, the applicant was ordered deported and granted voluntary departure on October 17, 2000 by an immigration judge. There is no evidence in the record that indicates that the applicant departed the United States, however, she has not established her admissibility under 8 C.F.R. § 245a.2(d)(5).

Given the applicant's reliance upon documents with minimal probative value, it is concluded that she 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 applicant is also ineligible for temporary resident status under 8 C.F.R § 245a.6 because she has not established her continuous residence.

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