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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: WEST PALM BEACH

Date: JUL 06 2010

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.

Elizabeth McCormack

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 of the West Palm Beach office, and the applicant appealed that decision to the Administrative Appeals Office (AAO).¹ The AAO dismissed the appeal on October 31, 2007. The applicant has requested that the application for permanent resident status be reopened. In response, the AAO will *sua sponte* reopen and reconsider the matter. The AAO's decision of October 31, 2007 will be withdrawn. The matter will be dismissed.

On August 19, 2005, the director denied application, finding that the applicant was ineligible for adjustment to permanent resident status because he 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.² On or about September 19, 2005, the applicant submitted an appeal of the decision, asserting that the evidence which he previously submitted establishes by a preponderance of the evidence that he continuously resided in the United States in an unlawful status for the duration of the requisite period.³ The applicant submitted an additional statement on appeal.⁴ On October 31, 2007, the AAO rejected the appeal as having been untimely filed on March 5, 2007. This error warrants a reopening of the case *sua sponte*.⁵ The AAO finds that the applicant has overcome the basis for rejection of the appeal. Therefore, the AAO's October 31, 2007 decision is withdrawn.

The AAO has considered the applicant's assertions, reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.⁶

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

¹ The Form I-485, application to adjust status to permanent resident, is missing pages 2 and 3. The AAO will adjudicate the appeal based on the evidence of record.

² The record reflects that the director's decision was sent to an attorney who was not counsel of record for the applicant.

³ The record reveals that the director acknowledged receipt of the appeal by correspondence dated September 27, 2005.

⁴ The applicant also submitted a copy of a check dated December 20, 1981, which was previously submitted in support of the I-485 application.

⁵ Motions to reopen a proceeding are not permitted for permanent residence applications filed under section 245A of the Immigration and Nationality Act (Act), 8 U.S.C. § 1255(a). See 8 C.F.R. § 103.5(b). The AAO may, however, *sua sponte* reopen any proceeding conducted by the AAO under 8 C.F.R. § 245a and reconsider any decision rendered in such proceeding. 8 C.F.R. § 103.5(b).

⁶ The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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 or 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. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA).

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 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 that he continuously resided in the United States in an unlawful status since such date and through May 4, 1988. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of witness statements and documents. The AAO has reviewed each document in its entirety to determine the applicant's eligibility. Some of the evidence submitted indicates that the applicant

resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed.

The record contains employment verification letters from [REDACTED] and [REDACTED]

The applicant has submitted two, almost identical employment verification letters from [REDACTED] [REDACTED] which state that the applicant was employed as a full time manager from December 1981 until July 1986.

The record contains an employment verification letter from [REDACTED] owner of the [REDACTED] [REDACTED] which states that the applicant was a part-time employee from February 1982 until March 1985 taking care of his stable, although the witness does not state the location of the applicant's employment. The testimony of [REDACTED] is inconsistent with the testimony of the applicant in the Form I-687, application for status as a temporary resident, filed in 1990 to establish the applicant's CSS class membership, in which the applicant does not list employment with the [REDACTED] during the requisite statutory period. Due to this inconsistency, the employment verification letter has minimal probative value.

The applicant has also submitted an employment verification letter from [REDACTED], a contractor for a cleaning business, which states that the applicant worked for her as a cleaner from November 1986 for the duration of the requisite period, although the witness does not state the location of the applicant's employment.

The employment verification letters of [REDACTED] not meet the requirements set forth in the regulations, which provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must include: (A) Alien's address at the time of employment; (B) Exact period of employment; (C) Periods of layoff; (D) Duties with the company; (E) Whether or not the information was taken from official company records; and (F) Where records are located and whether the Service may have access to the records. If the records are unavailable, an affidavit-form letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of subsections (E) and (F). The employment verification letters fail to comply with the above cited regulation because they lack considerable detail regarding the applicant's employment. For instance, the witnesses do not state the applicant's daily duties or the number of hours or days he was employed. Furthermore, the witnesses do not state how they were able to date the applicant's employment. It is unclear whether they referred to their own recollection or any records they may have maintained. For these additional reasons, the employment verification letters are of little probative value.

The applicant has submitted copies of two checks, dated December 20, 1981 and December 16, 1982, respectively, from the [REDACTED]. These documents are some evidence in support of the applicant's presence in the United States during some part of 1981 and 1982.

The record contains a copy of a Form I-94, arrival/departure record, which reveals that the applicant entered the United States on September 30, 1986 as a K-1 nonimmigrant, with a period of stay authorized until December 27, 1986.⁷ The record also contains a transcript of the applicant's driver's record from the Florida Department of Motor Vehicles, stating that the applicant first obtained a Florida driver's license on October 14, 1986. In addition, the applicant has submitted a copy of his Florida driver's license dated October 14, 1986. These documents are some evidence of the applicant's residence in the United States during some part of 1986.

The applicant has submitted a copy of a marriage certificate, showing that the applicant married in Florida on October 6, 1987. This document is some evidence of the applicant's residence in the United States during some part of 1987.

While the documents listed above indicate that the applicant resided in the United States for some part of the requisite period, considered individually and together with other evidence of record, they do not establish the applicant's continuous residence for the duration of the requisite period.

The remaining evidence in the record is comprised of copies of the applicant's statements, the I-485 application, a Form I-687, application for status as a temporary resident, filed in 1990 to establish the applicant's CSS class membership, and a second I-485 application to adjust status to permanent resident on the basis of an underlying Form I-130, petition for alien relative. As stated previously, to meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony, and the sufficiency of all the evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6). Here, the applicant has failed to provide probative and credible evidence of his continuous residence in the United States for the duration of the requisite period.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought. The various statements currently in the record which attempt to substantiate the applicant's residence and employment in the United States during the statutory period are not objective, independent evidence sufficient to establish the applicant's claim that he maintained continuous residence in the United States throughout the statutory period, and thus are not probative.

The record reveals that the applicant's I-485 application to adjust to permanent resident status on the basis of an underlying I-130 petition was denied on the basis of marriage fraud. Any alien who, by fraud or willful misrepresentation of a material fact, seeks to procure (or has sought to procure, or has procured) a visa, or other documentation, or admission into the United States or other

⁷ The record also contains a Form I-690, application for waiver of grounds of excludability, based upon the applicant having misrepresented that he was a nonimmigrant when he was an intending immigrant at the time he entered the United States on September 30, 1986. The waiver application has not been adjudicated.

immigration benefit, is inadmissible. Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). Section 245A(d)(2)(B)(i) of the Act, 8 U.S.C. § 1255a(d)(2)(B)(i) permits the Secretary of Homeland Security to waive certain grounds of inadmissibility, including inadmissibility under section 212(a)(6)(C)(i) of the Act, "in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest." 8 C.F.R. § 245a.2(k)(2). Although this ground of inadmissibility is waivable, even if the applicant were to be granted a waiver he remains ineligible for failure to establish his continuous unlawful residence.

Therefore, based upon the foregoing, the applicant has failed to establish continuous residence in an unlawful status in the United States for some time prior to January 1, 1982 and through May 4, 1988. The applicant is, therefore, not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

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