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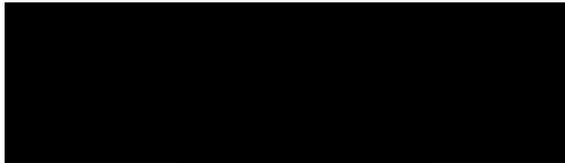
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



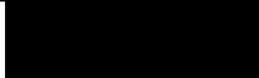
U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEW YORK

Date:

MAY 04 2010

MSC 01 359 62034

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, New York, New York, 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 submitted sufficient evidence to support such claim. Counsel contends that a response to the notice of intent to deny was submitted but not acknowledged by the director in the notice of denial. Counsel provides evidence that the response was received by United States and Citizenship and Immigration Services or USCIS (formerly the Immigration and Naturalization Service or the Service) prior to the issuing of the notice of denial. Therefore, counsel's response to the notice of intent to deny and supporting documents shall be incorporated into 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 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 issue to be examined 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 April 1, 1992. At part #34 of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, business, etc., the applicant did not list any information.

The applicant subsequently submitted his Form I-485 LIFE Act application on September 24, 2001.

In support of his claim of continuous residence in this country since prior to January 1, 1982, the applicant provided an employment letter containing the letterhead of the [REDACTED] manufacturers and importers of costume jewelry and hair accessories in New York, New York that is signed by manager [REDACTED]. Mr. [REDACTED] declared that this enterprise employed the

applicant as a "general helper" for \$200.00 per week from February 1982 to August 1987. However [REDACTED] did not provide the applicant's address of residence during his employment with [REDACTED] failed to state the applicant's duties, and failed to provide 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 applicant included a letter of membership containing the letterhead and seal of the Church of Our Savior in the Bronx, New York, which is signed by [REDACTED] who listed his position as pastor. [REDACTED] declared that the applicant was a member of this parish since November 1981. However, [REDACTED] failed to establish the origin of the information to which he was attesting and failed to provide the applicant's address of residence during the period he was a member of this church's parish as required under 8 C.F.R. § 245a.2(d)(3)(v). Moreover, it must be noted that the applicant failed to list any affiliation with Church of Our Savior at part #34 of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, business, etc.

Although the applicant submitted original postmarked envelopes, the envelopes have no probative value as the postmarks are either indiscernible or dated after the end of the requisite period on May 4, 1988.

The applicant provided two affidavits signed by [REDACTED] as well as single affidavits or declarations, signed by [REDACTED] and [REDACTED]. While the affiants all attested to the applicant's residence in the United States for the required period 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 since prior to January 1, 1982.

The applicant included a photocopy of his Spanish language National Military Service card from the Mexican Secretary of National Defense. The front of the document lists the applicant's name, date and place of birth, name of mother and father, his marital status as single, his occupation as painter, his ability to read and write, his completion of preparatory school, and his "domicilio" or home as [REDACTED] in Comalcalco, Tabasco, Mexico. The front of the document is date stamped May 3, 1986 and also contains a photograph of the applicant, two of his fingerprints, and the matriculation number [REDACTED]. The opposite side of the document contains a notation that reads in pertinent part as follows:

... [REDACTED] [the applicant's full name] Matricula [REDACTED]
Clase 1960 Cumplio Con El Servicio Militar De Conformidad Con El Articulo
15/[illegible letter] [REDACTED]
[REDACTED] 31 De Diciembre De 1987.

The English translation of this notation is as follows:

[REDACTED] with matriculation number [REDACTED] class of 1960 completed military service in conformity with Article 15[illegible letter] of the law encompassing proper service. He passed to the first reserve on December 31, 1987.

The National Military Service card from the Mexican Secretary of National Defense establishes the applicant was present in Mexico when he was photographed and fingerprinted on May 3, 1986 through the date he completed his compulsory military service and passed into the reserves on December 31, 1987. This document and the information contained therein seriously diminish the credibility of the applicant's claim of continuous residence in the United States from prior to January 1, 1982 to May 4, 1988.

A review of the record reveals that a Form I-130, Petition for Alien Relative, was submitted on the applicant's behalf as the spouse of a legal permanent resident of the United States on July 19, 2001. The record contains a Form G-325A, Report of Biographic Information, which was included with the Form I-130 petition. At that part of the Form G-325A biographic report where applicants were asked to list their last address outside of the United States of more than one year, the applicant listed "[REDACTED]" in Comalcalco, Tabasco, Mexico, from birth to November 1987. It must be noted that the applicant signed the Form G-325A biographic report certifying that the information contained in the document was true and correct. The fact that the Form G-325A biographic report reflects that the applicant resided in Mexico from his birth on June 25, 1960 to November 1987 only serves to damage the credibility of the applicant's claim of residence in this country for the requisite period.

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. The director further determined that the record contained contradictory and conflicting testimony and evidence relating to his claim of continuous unlawful residence in this country for the period in question. 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 17, 2007.

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 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 applicant provides a statement on appeal in which he claims that the National Military Service card from the Mexican Secretary of National Defense that was issued on May 3, 1986 and has been discussed above was procured by his father in Mexico on his behalf. However, the applicant's explanation is not credible in that the National Military Service Card issued on May 3, 1986 bears what appears to be a contemporaneous photograph and fingerprints of the applicant

as well as specific information regarding his subsequent completion of his compulsory military service in compliance with Mexican law on December 31, 1987.

The applicant asserts that his previous attorney erroneously entered information reflecting the applicant resided at [REDACTED] in Comalcalco, Tabasco, Mexico, from birth to November 1987 on the Form G-325A biographic report cited above. Nevertheless, the applicant's explanation is not reasonable as the National Military Service card from the Mexican Secretary of National Defense that was issued on May 3, 1986 listed this same address as the applicant's "domicilio" or home as of this date.

In addition, the applicant fails to provide any independent evidence or testimony to support the claims and assertions he puts forth on appeal relating to the National Military Service card from the Mexican Secretary of National Defense and the Form G-325A biographic report. "To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony." 8 C.F.R. § 245a.2(d)(6). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The absence of sufficiently detailed supporting documents and the conflicting nature of the evidence contained in the record seriously undermine 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 and conflicting nature of the evidence contained in the record, 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.

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