



U.S. Citizenship  
and Immigration  
Services

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

[REDACTED]

L2

FILE: [REDACTED] Office: DALLAS Date: MAY 27 2010  
MSC-02-134-63689

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.

*Elizabeth M. McCormack*

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was initially denied by the Director, Houston. On appeal, the matter was remanded to the director for further action and consideration. The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act has now been recommended to be denied by the Director, Dallas, and certified to the Administrative Appeals Office (AAO) for review as required by 8 C.F.R. § 245a.20(d). The decision of the director will be affirmed and the application will be denied.

The director initially denied the I-485 application for the applicant's failure to pass the citizenship/civics test. The director found that the letter provided by the applicant from the Jacksonville Literacy Council did not meet the standards set by United States Citizenship and Immigration Services (USCIS). The director has now denied the application, finding that the applicant had not provided credible evidence to establish that he had entered the United States prior to January 1, 1982, and thereafter continuously resided in the United States in an unlawful status for the duration of the requisite period.

On certification, counsel states that the applicant has met his burden of proof and that his application should be approved. Counsel requested a copy of the record of proceedings under the Freedom of Information Act (FOIA). The record reflects that the FOIA request was processed on September 15, 2009. (NRC2009009559). No additional evidence or brief has been received into the record since September 15, 2009.

At issue in this proceeding is whether the applicant submitted sufficient credible evidence to meet his burden of establishing 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.

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 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 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.* 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.

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.

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

The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1, 1982 and lived in an unlawful status during the requisite period consists of affidavits written by friends. The AAO will consider all of the evidence relevant to the requisite period to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision.

The applicant claimed on his class determination form and his Form I-687 application that he first entered the United States without inspection through Del Rio, Texas, on February 14, 1981 with his father.

The applicant submitted affidavits from [REDACTED] and [REDACTED] to establish his initial entry and residence in the United States during the requisite period. [REDACTED] stated that the applicant resided at [REDACTED], since 1981. [REDACTED] states that the applicant resided with her in Dallas beginning in 1981 after he was abandoned by his father at the age of nine. [REDACTED] states that he knew the applicant lived with [REDACTED] beginning in 1982 and attempted to locate her by going to her last place of employment but was unable to find her. [REDACTED] states that he knew the applicant came to the United States in 1981 because he visited him. The affiants generally attest to attending the

same church, participating in church fund-raising projects, being friends and visiting with the applicant but provide no other information.

In totality, the affidavits contained in the record do not include sufficient detailed information about the claimed relationship and the applicant's continuous residence in the United States throughout the requisite period. For instance, the witnesses do not supply any details about the applicant's life, such as, knowledge about his family members, education, hobbies, employment or other particulars about his life in the United States. The witnesses fail to indicate any other details that would lend credence to the claimed acquaintance with the applicant and the applicant's residence in the United States during the requisite period.

The affidavits do not provide concrete information, specific to the applicant and generated by the asserted association with him, which would reflect and corroborate the extent of this association and demonstrate that the affiants had a sufficient basis for reliable knowledge about the applicant during the time addressed in their affidavits. 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. Therefore, the affidavits have little probative value.

Counsel states that representatives of United States Citizenship and Immigration Services (USCIS) did not make an effort to contact [REDACTED] or [REDACTED] for verification. However, the applicant bears the burden of proving by a preponderance of the evidence that he resided continuously in the United States throughout the requisite period and that the affidavits submitted have sufficient detail to establish the truth of their assertions. USCIS is not required to contact affiants to supplement their testimony.

Another issue in this proceeding is whether the applicant has satisfied the "basic citizenship skills" requirement of section 1104(c)(2)(E)(i)(I) of the LIFE Act. The AAO finds that the letter provided by the applicant does not meet the standards set by USCIS for passing the citizenship/civics requirements.

Under section 1104(c)(2)(E)(i) of the LIFE Act ("Basic Citizenship Skills"), an applicant for permanent resident status must demonstrate that he or she:

- (I) meets the requirements of section 312(a) of the Immigration and Nationality Act (8 U.S.C. 1423(a)) (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States); or
- (II) is satisfactorily pursuing a course of study (recognized by the Attorney General) to achieve such an understanding of English and such a

knowledge and understanding of the history and government of the United States.

Under section 1104(c)(2)(E)(ii) of the LIFE Act, the Attorney General may waive all or part of the requirements for aliens who are at least 65 years of age or developmentally disabled.

The applicant, who is neither 65 years old nor developmentally disabled, does not qualify for either of the exceptions in section 1104(c)(2)(E)(ii) of the LIFE Act. Nor does he satisfy the “basic citizenship skills” requirement of section 1104(c)(2)(E)(i)(I) of the LIFE Act because he does not meet the requirements of section 312(a) of the Immigration and Nationality Act (Act). An applicant can demonstrate that he or she meets the requirements of section 312(a) of the Act by “[s]peaking and understanding English during the course of the interview for permanent resident status” and answering questions based on the subject matter of approved citizenship training materials, or [b]y passing a standardized section 312 test . . . by the Legalization Assistance Board with the Educational Testing Service (ETS) or the California State Department of Education with the Comprehensive Adult Student Assessment System (CASAS).” 8 C.F.R. §§ 245a.3(b)(4)(iii)(A)(1) and (2).

In the alternative, an applicant can satisfy the basic citizenship skills requirement by demonstrating compliance with section 1104(c)(2)(E)(i)(II) of the LIFE Act. The “citizenship skills” requirement of the section 1104(c)(2)(E)(i)(II) is defined by regulation in 8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3). As specified therein, an applicant for LIFE Legalization must establish that:

He or she has a high school diploma or general education development diploma (GED) from a school in the United States . . . . 8 C.F.R. § 245a.17(a)(2), or

He or she has attended, or is attending, a state recognized, accredited learning institution in the United States, and that institution certifies such attendance. The course of study at such learning institution must be for a period of one academic year (or the equivalent thereof according to the standards of the learning institution) and the curriculum must include at least 40 hours of instruction in English and United States history and government . . . . 8 C.F.R. § 245a.17(a)(3).

Both 8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3) specify that applicants must submit evidence to show compliance with the basic citizenship skills requirement “either at the time of filing Form I-485, subsequent to filing the application but prior to the interview, or at the time of the interview . . . .”

The regulation at 8 C.F.R. § 245a.17(b) states that:

An applicant who fails to pass the English literacy and/or the United States history and government tests at the time of the interview, shall be afforded a

second opportunity after 6 months (or earlier at the request of the applicant) to pass the tests or submit evidence as described in paragraphs (a)(2) and (a)(3) of this section [8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3)]. The second interview shall be conducted prior to the denial of the application for permanent residence and may be based solely on the failure to pass the basic citizenship skills requirements.

Pursuant to 8 C.F.R. § 245a.17(b), the applicant was interviewed on June 16, 2003 and not given the citizenship/civics test due to his attorney providing a letter from the Jacksonville Literacy Council stating that he was attending classes in English and United States history and government. However, the certification provided did not meet the standards set by USCIS. Therefore, the applicant was scheduled to be re-interviewed on August 13<sup>th</sup> in connection with his LIFE Act application. Counsel requested that the interview be rescheduled as he had a pre-existing conflict. On August 27, 2003, the second and final interview was scheduled, however, counsel requested that the interview be rescheduled in six months to give the applicant an opportunity to prepare for a re-test or submit evidence that he meets the citizenship skills requirements. The director denied the application and in a subsequent appeal, the case was remanded to the director for further action and consideration. The AAO found that the director had not issued a Notice of Intent to Deny (NOID) prior to her Notice of Decision (NOD).

In the director's current NOID dated January 28, 2008, she failed to mention the fact that the applicant had not complied with the basic citizenship skills requirements and denied the I-485 application solely on the applicant's failure to provide sufficient evidence of his continuous residence and presence during the requisite period. On certification, counsel addressed the fact that the director did not mention the English/civics certification but rather requested additional evidence of the applicant's presence during the requisite period. Counsel submitted additional affidavits regarding the applicant's residence during the requisite period but did not address the applicant's failure to comply with the basic citizenship skills requirements. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Therefore, the basic citizenship skills requirements must be addressed.

The regulations stipulate that the applicant must have attended, or is attending, a state recognized, accredited learning institution in the United States, and that institution certifies such attendance and the course of study at such learning institution must be for a period of one academic year (or the equivalent thereof according to the standards of the learning institution) and the curriculum must include at least 40 hours of instruction in English and United States history and government. The information received from the Jacksonville Literacy Council dated July 22, 2003 states that the applicant only attended two hours in December, 2002, and four hours in January, 2003. In addition, the applicant has not provided evidence of having passed a standardized citizenship test, as permitted by 8 C.F.R. § 312.3(a)(1). The applicant does not have a high school diploma or a GED from a United States school, and therefore does not satisfy the regulatory requirement of 8 C.F.R. § 245a.17(a)(2). Therefore, the applicant does not satisfy

either alternative of the “basic citizenship skills” requirement set forth in section 1104(c)(2)(E)(i) of the LIFE Act.

An applicant applying for adjustment of status under this part has the burden of proving by a preponderance of evidence that he or she is eligible for adjustment of status under section 245A of the Act. 8 C.F.R. § 245a.2(d)(5). In the instant case, the applicant has failed to submit sufficient evidence to overcome the director’s denial. The insufficiency of the evidence calls into question the credibility of the applicant’s claim to have entered the United States before January 1, 1982 and his continuous unlawful residence in the United States since such date and throughout the requisite period.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and continuously resided in an unlawful status in the United States for the requisite period as required under Section 1104(c)(2)(B) of the LIFE Act. Further, the applicant has not satisfied the “basic citizenship skills” requirement of section 1104(c)(2)(E)(i)(I) of the LIFE Act. Given this, he is ineligible for permanent resident status under Section 1104 of the LIFE Act.

**ORDER:** The decision of the director is affirmed. The application is denied. This decision constitutes a final notice of ineligibility.