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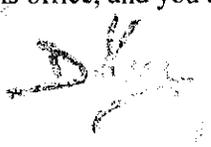
Applicant:

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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.


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. This appeal will be dismissed.

The director concluded that the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and, therefore denied the application.

On appeal, counsel asserts that the applicant has submitted sufficient documentation to United States Citizenship and Immigration Services or USCIS (formerly Immigration and Naturalization Service or the Service) establishing his continuous unlawful residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel requests a copy of the record of proceeding and indicated that a brief would be forthcoming within thirty days of compliance with this request.

The record shows that United States and Citizenship and Immigration Services or USCIS (formerly the Immigration and Naturalization Service or the Service) complied with counsel's request with Control Number [REDACTED] and mailed a copy of the record to counsel on September 13, 2009.

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.

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 January 4, 1990. At part #35 of the Form I-687 application where applicants were asked to list all absences from the United States since January 1, 1982, the applicant listed three absences when he travelled to Iran to visit family from July 1983 to August 1983, June 1984 to August 1984, and June 1986 to August 1986. Subsequently, the applicant filed his Form I-485 LIFE Act application on March 18, 2002.

In an attempt to establish continuous unlawful residence since before January 1, 1982, the applicant furnished evidence including affidavits, photocopied pages from his Iranian passport, a Form I-20, Certificate of Eligibility for Non-Immigrant (F-1) Student Status, school transcripts, documents from the GMAC Corporation, a Social Security Administration Earnings Statement, and a computer printout from the Social Security Administration. This documentation tends to establish the applicant first entered the United States with an F-1 student visa on January 5, 1979 and subsequently reentered this country again with an F-1 student visa on August 14, 1981, August 28, 1983, August 30, 1984, and August 28, 1986. The school transcripts in the record reflect that the applicant attended [REDACTED], from September 4, 1979 to August 25, 1980 and again from June 1, 1982 to August 16, 1982, attended [REDACTED] from September 4, 1980 through the date he completed a Bachelor of Science degree in July 1983, attended the [REDACTED] from the fall of 1983 through the end of their “winter” semester in 1986 and again for their “winter” semester of 1988 earning a Master of Science degree on August 23, 1985, and attended the [REDACTED] beginning in September in September 1986 through December 15, 1987.

The first issue to be examined in these proceedings is whether the applicant had violated his nonimmigrant F-1 student status prior to January 1, 1982 and did the Government know of his unlawful status as of this date.

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 Act that were most recently in effect before the date of the enactment of this [the LIFE] Act shall apply.

(ii) Nonimmigrants - In the case of an alien who entered the United States as a nonimmigrant before January 1, 1982, such alien must establish that the period of authorized stay as a nonimmigrant expired before such date through the passage of time or that the alien's unlawful status was known to the Government as of such date.

The word "Government" means the United States Government. An alien who claims his unlawful status was known to the Government as of January 1, 1982, must establish that prior to January 1, 1982, documents existed in one or more government agencies so, when such documentation is taken as a whole, it would warrant a finding that the alien's status in the United States was unlawful. *Matter of P-*, 19 I. & N. Dec. 823 (Comm. 1988).

Congress provided only two ways in which an applicant who had been admitted as a nonimmigrant could establish eligibility for permanent residence under the LIFE Act. The first was to clearly demonstrate the authorized period of stay expired prior to January 1, 1982. The second was to show that, although the authorized stay had not expired as of January 1, 1982, the applicant was nevertheless in an unlawful status that was known to the Government as of that date. In doing so Congress acknowledged it was possible to have an authorized stay and yet still be unlawful due to another reason, such as illegal employment. However, the LIFE Act very clearly states the unlawfulness had to have been known to the Government as of January 1, 1982.

The record contains documentation from the Social Security Administration reflecting that the applicant had taxable earnings subject to the withholding of Social Security taxes in 1980 and 1981. This documentation demonstrates that the applicant had violated his F-1 student status by engaging in illegal employment, and therefore he was in an unlawful status which was known to the Government as of January 1, 1982. While the director characterized the applicant's subsequent entries into the United States with a F-1 student visa on August 28, 1983, August 30, 1984, and August 28, 1986 as lawful entries, such a characterization is in error as the applicant was returning to his prior unlawful residence. Consequently, the applicant has overcome this basis of the director's denial.

The next issue to be examined in these proceedings is whether the applicant's absences from the United States from June 1984 to August 1984 and again from June 1986 to August 1986 broke his continuous unlawful residence in this country.

"Continuous residence" is defined at 8 C.F.R. § 245a.15(c), as follows:

An alien shall be regarded as having resided continuously in the United States if:
(1) No single absence from the United States has exceeded *forty-five (45) days*, and the aggregate of all absences has not exceeded *one hundred and eighty (180) days* between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed[.] [Emphasis added.]

As previously noted, the applicant testified that he was absent from the United States when he travelled to Iran to visit family from July 1983 to August 1983, June 1984 to August 1984, and June 1986 to August 1986. The Form I-20 F-1 student certificate and entry stamps in the applicant's Iranian passport establish that he returned to this country on August 28, 1983, August 30, 1984 and August 28,

1986, respectively. Even if the applicant left the United States on the last day in June of 1984 and 1986, his absence from June 30, 1984 to August 30, 1984 constituted a minimum of 61 days and his absence from June 30, 1986 to August 28, 1986 constituted a minimum of 59 days. Clearly, both of the applicant's absences exceeded the 45 day limit for a single absence put forth in 8 C.F.R. § 245a.15(c)(1). Although not dealt with in the district director's decision, there must, nevertheless, be a further determination as to whether the applicant's absence from 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, 810 (Comm. 1988) holds that emergent means "coming unexpectedly into being."

The applicant initially testified that the purpose of his trips Iran in 1983, 1984, and 1986 was to visit his family at part #35 of the Form I-687 application filed on January 4, 1990. The record contains evidence demonstrating that the applicant returned to the United States from these absences on August 28, 1983, August 30, 1984 and August 28, 1986, respectively. Both in response to the notice of intent to deny and on appeal, the applicant claims that he intended to return to the United States within five weeks of his departure when he travelled to Iran in both 1984 and 1986, but that emergent reasons delayed his return to the country on each occasion. Specifically, the applicant asserts that he was told that he did not have a valid exit stamp by officials at the airport when attempted to leave Iran in 1984 because the Iranian Ministry of Higher Education believed he had completed his studies and was subject to military service requirements. The applicant states that it took approximately one month before he was allowed to depart Iran and return to the United States on August 30, 1984. The applicant contends that he went to the United States Consulate in Hamburg, Germany shortly after his arrival from Iran during his 1986 absence and expected to obtain a visa to return to this country within a matter of days. The applicant declares that a new policy in the visa application process prevented him from obtaining a valid visa for approximately one month before he could return to the United States on August 28, 1986.

Nevertheless, the applicant fails to provide any evidence to support his claim that his return to this country was delayed in the manner described above in 1984 and 1986. "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.12(f). 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)). Further, the fact that the applicant returned to the United States on August 28, 1983, August 30, 1984 and August 28, 1986, after three trips to Iran to visit family in 1983, 1984, and 1986, reflects a pattern of consistent and regular travel for a particular purpose by the applicant with his return to this country timed to coincide with the start of his academic calendar and school year in the fall semester of each year he travelled. As such, it cannot be concluded that either of the applicant's claimed absences from the United States from June 1984 to August 1984 and from June 1986 to August 1986 were due to an "emergent reason" within the meaning of *Matter of C*, *supra*.

The applicant has specifically admitted that he was absent from the United States from at least June 30, 1984 to August 30, 1984 and again from June 30, 1986 to August 28, 1986, both of which are in excess of the 45 day limit for a single absence. The applicant has failed to credibly document that an emergent reason delayed his return to the United States on either occasion. The applicant's absences from this country must be considered to have broken his continuous unlawful residence 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). While this basis of inadmissibility is waivable, the applicant has failed to establish his eligibility for permanent resident status because of his two absences from the United States during the required period. It must be noted that the applicant submitted another separate Form I-690 waiver application requesting that any grounds of inadmissibility arising from his absences also be waived. Regardless, the applicant's absences do not render him inadmissible but instead make him ineligible to adjust to permanent residence under the provisions of the LIFE Act and such eligibility requirement cannot be waived even for humanitarian purposes.

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