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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

L2

FILE:

Office: DALLAS

Date: SEP 29 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.

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

The director denied the application because the applicant failed to demonstrate that he resided in the United States in a continuous, unlawful status from before January 1, 1982, through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act. Specifically, the director noted that the applicant was in lawful status from 1981 through 1983.

On appeal, counsel, on behalf of the applicant, contends that the applicant's lawful status would not make him ineligible for relief. The AAO has 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.¹

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 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 through May 4, 1988. *See* § 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 and is otherwise eligible for adjustment of status under section 1104 of the LIFE Act. 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). 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 evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.12(f). 8 C.F.R. § 245a.2(d)(6).

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

¹ The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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 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 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.

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).

On November 27, 2001, the applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status pursuant to section 1104 of the Life Act (I-485 LIFE Legalization Application). The applicant also qualifies as a subclass member pursuant to the terms of the *Northwest Immigrant Rights Project, et al. vs. U.S. Citizenship and Immigration, et al.* Stipulation of Settlement (Case No. 88-379R) (*NWIRP Settlement Agreement*), as stated below.

All persons who entered the United States in a non-immigrant status prior to January 1, 1982, who are otherwise prima facie eligible for legalization under section § 245A of the INA, 8 U.S.C. § 1255a, who are within one or more of the Enumerated Categories described below, and who . . . was denied or whose temporary resident status was terminated, where the INS or CIS action or inaction was because INS or CIS believed the applicant had failed to meet the “known to government” requirement or the requirement that s/he demonstrate that his/her unlawful residence was continuous.

Pursuant to the *NWIRP Settlement Agreement*, a person who violated the terms of their nonimmigrant status prior to January 1, 1982, in a manner known to the government includes those for whom documentation or the absence therefore existed in the records of one or more government agencies which, taken as a whole, warrants a finding that the applicant was in an unlawful status prior to January 1, 1982, in a manner known to the government.

The applicant claims to have continuously resided in the United States from before January 1, 1982, through May 4, 1988. The issue in this proceeding is whether the applicant has established 1) he entered the United States on or before January 1, 1982, and 2) he has continuously resided

in an unlawful status in the United States from such date through May 4, 1988. The documentation that the applicant submits in support of his claim consists of a copy of his H-4 visa, a copy of school report card, a copy of an I-94 Departure Record, and affidavits from individuals claiming to know the applicant during the requisite period.

The record reflects that the applicant was issued a non-immigrant H-4 visa on August 19, 1981, and that he entered the United States on September 17, 1981. The record also contains a copy of his school report card for the school year 1980 to 1981. These documents provide evidence that the applicant entered the United States prior to January 1, 1982. After his entry into the United States in September 1981, the applicant would have been required to file a quarterly address report with the Immigration and Naturalization Service (now U.S. Citizenship and Immigration Services) by December 1981. *See* Section 265(a) of the Act as in place through December 29, 1981 (which indicates that nonimmigrants must notify the U.S. government in writing of a change of address within 10 days of the address change and must report their addresses at the end of each three-month period after entering, regardless of whether there is any address change.) There is no evidence of such a filing in the record. Given this, the applicant was in violation of his status and his status became unlawful before January 1, 1982.

The record contains a copy of the applicant's Form I-94, Departure Record, indicating that the applicant was admitted to the United States on April 13, 1984. While this evidence establishes the applicant's presence in the United States in April 1984, it fails to establish the applicant's continuous residence throughout the requisite period.

The affidavits from [REDACTED] are general in nature and state that the witnesses have knowledge of the applicant's residence in the United States for all of the requisite period. These statements fail, however, to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.

None of the witness statements provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they have a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness statements must do more than simply state that a declarant 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 minimal

probative value and will be given little weight as evidence in support of the applicant's claim of continuous residence in the United State during the requisite period.

Based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he maintained continuous residence from before January 1, 1982, through May 4, 1988, as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act.

Beyond the decision of the director, the AAO finds that the applicant is not eligible for temporary resident status pursuant to the terms of the agreements reached in the CSS/Newman Settlement Agreements because the record indicates that he is inadmissible under section 212(a)(6)(C)(i) of the Act.

The regulation at 8 C.F.R. § 245a.2(b) provides in pertinent part:

(b) Eligibility. The following categories of aliens, who are otherwise eligible to apply for legalization, may file for adjustment to temporary residence status:

(9) An alien who would be otherwise eligible for legalization and who was present in the United States in an unlawful status prior to January 1, 1982, and reentered the United States as a nonimmigrant, such entry being documented on Service Form I-94, Arrival-Departure Record, in order to return to an unrelinquished unlawful residence.

(10) An alien described in paragraph (b)(9) of this section must receive a waiver of the excludable charge 212(a)(19) as an alien who entered the United States by fraud.

The ground of excludability at section 212(a)(19) of the Act has been replaced by the ground of inadmissibility listed at section 212(a)(6)(C)(i) of the Act, as amended.

Upon reentry in 1984, the applicant he presented himself as a lawful nonimmigrant upon admission. Yet, according to the claims which the applicant made in this proceeding, his intent was to continue residing unlawfully in the United States. Thus, the applicant procured entry into the United States by willfully misrepresenting a material fact. As such, he is inadmissible under section 212(a)(6)(C)(i) of the Act. This ground of inadmissibility may be waived, but given the applicant's failure to establish continuous residence, no purpose would be served by filing a waiver application.

It is also noted that, on April 24, 2001, the applicant was found deportable under section 237 of the Act and ordered removed from the United States for a period of ten years. On April 8, 2008, a stay of removal was issued and the applicant was placed under supervision.

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