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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

[REDACTED]

FILE: [REDACTED] Office: HOUSTON Date: FEB 07 2011

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.

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

The director denied the application based on the determination that the applicant was ineligible to adjust to permanent resident status under the provisions of the LIFE Act. The director found that the applicant 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. Specifically, the director noted that the applicant admitted that he was absent from the United States from April 1985 until October 1986. The director also noted that the applicant had not met the "basic citizenship skills" required under section 1104(c)(2)(E) of the LIFE Act.

On appeal, through counsel, the applicant indicates that the applicant's absence from the United States for approximately 18 months during the relevant period was due to an emergent reason, his grandmothers were ill. The applicant also indicates that he was told by an United States Citizenship and Immigration Services (USCIS) officer that his certificates establishing his course work under section 1104(c)(2)(E) of the LIFE Act were sufficient. The applicant has not submitted any additional evidence on appeal. The record reflects that the applicant's FOIA request, [REDACTED] was processed on September 15, 2010.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Following *de novo* review, the AAO finds that the applicant has failed to establish his continuous residence in the United States from January 1, 1982 through the end of the relevant period. The AAO also agrees with the director that the applicant has not established that he has met the basic citizenship skills requirements.

An applicant for permanent resident status 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).

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 under the provisions of section 212(a) of the 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 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. 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 “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 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 (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 two issues relevant to this proceeding are (1) whether the applicant has established that his absence from the United States from April 1985 until October 1986 was due to an emergent reason; and (2) whether he has established that he met the “basic citizenship skills” required under section 1104(c)(2)(E) of the LIFE Act.

The applicant testified that he first entered the United States in November 1981. He testified that he departed the United States in April 1985 and remained in Mexico to care for his two grandmothers until returning to the United States in October 1986, nearly 18 months later. It is noted that the applicant submitted a Form I-687 in 1991 in which he listed a residence in the United States from May 1980 until December 1983; September 1984 until April 1986; November 1986 until December 1986; and September 1990 until the date of filing. The applicant has not addressed the gaps in his residence. He stated in the same application that he departed the United States only once during the relevant period, from April 1985 until October 1986. However, on his Class Membership worksheet submitted in connection with the Form I-687, he indicates that he was turned away from filing due to an absence in October 1987.

The applicant shall be regarded as having resided continuously in the United States if at the time the application for temporary resident status is considered filed, as described above pursuant to the CSS/Newman Settlement Agreements, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days during the requisite period unless the applicant can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the applicant was maintaining a residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.2(h).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to 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 (Comm. 1988), holds that "emergent" means "coming unexpectedly into being."

On May 21, 2007, the director issued a Notice of Intent to Deny (NOID), stating that USCIS records indicated certain absences. In response to the NOID and on appeal, the applicant indicates that his return to the United States was delayed because he had to care for his grandmothers who were ill. In support of this assertion, the applicant submits copies of two death certificates issued for the applicant's grandmothers. Both grandmothers died within days of each other in December 1986. As noted by the director, the death certificates do not establish that the applicant was in Mexico to care for the deceased, nor has the applicant provided any evidence that his return was delayed by their illnesses. Thus, the AAO agrees with the director that the applicant has not established that his return to the United States was delayed for an emergent reason. Therefore, the applicant's absence from the United States from April 1985 until October 1986, an absence of at least 519 days, was a break in any period of continuous residence he may have established. The applicant is ineligible for permanent resident status on this basis.

Secondly, the applicant has not established that he met the "basic citizenship skills" required under section 1104(c)(2)(E) of the LIFE Act. The applicant was interviewed twice in connection with this application. On both occasions, he failed to establish the basic citizenship skills required under section 1104(c)(2)(E) of the LIFE Act.

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.

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 applicant submitted a copy of a certificate from the [REDACTED]. The certificate lists “40 hours” below the words “awarded on” and appears to have been altered, since the applicant previously submitted a copy of the same certificate without the notation “40 hours.” The applicant was notified of the deficiencies in the certificate and failed to address the issue on appeal. He has not submitted any additional evidence that he met the civics requirement or provided the original completion certificates. Thus, the AAO finds that the applicant is ineligible for benefits under the LIFE Act on this basis.

As is stated above, 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). The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3).

Given the applicant’s reliance upon documents with minimal probative value, 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. He also failed to establish that he met the basic citizenship skills required under section 1104(c)(2)(E) of the LIFE Act.

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