



U.S. Citizenship
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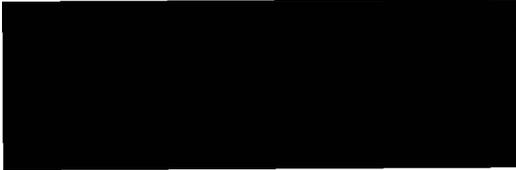
Applicant:



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. Any further inquiry must be made to that office.

Robert P. ... nn, Director
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Dallas, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the applicant has provided credible verifiable testimony from individuals and has met the burden of proving by a preponderance of the evidence that she resided in the United States during the requisite period. Counsel states that the applicant's legal entry in 1986 did not interrupt her continuous unlawful presence as she reentered the United States with a visa in order to return to an unrelinquished unlawful presence. Counsel provides copies of the documents previously submitted in response to the Notice of Intent to Deny.

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. 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 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.* 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 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 CIS 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).

At the time of her initial interview on June 12, 1997, the applicant, in a sworn statement, admitted that she arrived in the United States to reside permanently in May 1986 through New York. The applicant also

admitted that since her first arrival in the United States she had only departed twice; April 1993 and July 1995 due to family emergencies.

Along with her LIFE application, in an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence:

- A medical document from the Mesquite Community Hospital in Mesquite, Texas dated January 17, 1987 for services rendered on January 14, 1987.
- Credit card receipts dated August 7, 1987 and October 8, 1987.
- A letter dated April 15, 2002 from [REDACTED] of Congregation Ohev Shalom in Dallas, Texas who indicated that for more than 11 years the applicant has been affiliated with the Congregation Ohev Shalom.

The applicant also presented other documents dated in 1986 and 1987; however, as the applicant's name was not listed on these documents, they have no probative value or evidentiary weight and will not be considered.

On May 23, 2002, the director issued a Form I-72 requesting that the applicant submit evidence of continuous residence in the United States from January 1, 1982 through May 1988. The applicant, however, failed to respond to the notice.

On August 11, 2003, the director issued a Notice of Intent to Deny, which provided the applicant the opportunity to submit evidence to establish residence in the United States from January 1, 1982 to January 1986. The director also advised the applicant of the fact she had a child born in her native country Israel in 1985, and of her statement made on June 12, 1997 regarding her 1986 entry into the United States, which had been verified by a copy of her Form I-94, Arrival/Departure Record.

The applicant, in response, provided an additional affidavit dated September 2, 2003 from [REDACTED] who indicated, "I have been told by a reliable source that [the applicant] lived in Dallas in 1984 and was a member of the Dallas Jewish community." The applicant also submitted a letter dated August 29, 2003 from [REDACTED] an English as a Second Language instructor at El Centro College in Texas. Mr. [REDACTED] indicated that he met the applicant in 1982 through an acquaintance, and from January 1983 to May 1983 he gave the applicant private classes.

Mr. [REDACTED]'s letter may serve only to establish the applicant's presence in the United States from a point in 1982 through five months during 1983. The letter from [REDACTED] lacks probative value and evidentiary weight as his attestation to the applicant's residence during the requisite period was based on "a reliable source" and not of his own personal knowledge. No evidence from the "reliable source" has been presented to support the [REDACTED] statement. Simply 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 record reflects that the applicant has a daughter who was born in Israel on November 20, 1985. On her Form I-687 application, the applicant failed to disclose the *actual* date of birth of her daughter and that she had been out of the United States during the period she had given birth to her daughter. The applicant's significant

omission of these facts, coupled with the applicant only providing *two* affidavits in support of her claim of residence prior to 1987, are strong indications that 1986 was her initial entry into the United States. These factors diminish the credibility of her claim to have continuously resided in the United States during the period in question.

Further, the applicant has presented contradicting information for which no explanation has been provided. The applicant claimed the following residences on her Form I-687 application dated October 11, 1990:

Dallas, Texas from 1980 to 1982
Fort Lauderdale, Florida from 1982 to 1986
Dallas, Texas from 1986 to 1990

Citizenship and Immigration Services records reflect that the applicant had previously filed a timely Form I-687 application under section 245A of the Immigration and Nationality Act on November 25, 1987 at the Miami legalization office. The alien registration number, A91 480 285 was assigned to the alien at that time. A review of this record reflects that the applicant did not claim any residence in the United States prior to 1985. On her Form I-687 application, the applicant claimed her residences as follows:

Fayetteville, Arkansas from July 1985 to December 1986
Winter Peak, Florida from January 1987 to March 1987
Miami, Florida from March 1987 to November 1988

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The regulation at 8 C.F.R. § 245a.12(e) provides that “[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods.” Preponderance of the evidence is defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” *Black’s Law Dictionary* 1064 (5th ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991). Based on the evidence in this case, the AAO determines that the applicant has not met her burden of proof. The applicant has not established, by a preponderance of the evidence, that she entered the United States before January 1, 1982 and resided in this country in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b).

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