



U.S. Citizenship
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Services

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FILE: MSC 01 359 60466

Office: HOUSTON

Date: NOV 09 2006

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:

SELF-REPRESENTED

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Houston, and is now before the Administrative Appeals Office 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 from before January 1, 1982 through May 4, 1988. The director found inconsistencies in the evidence on record. In particular, the director noted that the applicant testified at her interview that she resided in Philadelphia from 1981 through 1990, but submitted receipts for merchandise purchased in Houston, Texas in July of 1988. Also, the director observed that the applicant failed to list any absences from the United States in 1985 on her Form I-485, though she also indicated in that form that her first son was born in Honduras in that year.

On appeal, the applicant submits an affidavit confirming that she left the United States for Honduras in August 1985, returning to the United States two weeks after her son was born on September 4, 1985. The applicant also states, and submits a third party affidavit attesting, that though the applicant lived in Philadelphia, Pennsylvania in 1988, she made visits to Houston during which she obtained the receipts found in the record.

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 alien shall be regarded as having resided continuously in the United States if 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. 8 C.F.R. § 245a.15(c)(1).

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 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.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

The applicant has now admitted that she neglected to include an absence from August 1985 to September 1985 on any of her submitted forms. However, the applicant has not provided an explanation as to why she failed to include this absence. Furthermore, the applicant has failed to give the exact dates that she was absent during this period, stating only that she departed from the United States in August 1985 and returned two weeks after giving birth to her son on September 4, 1985. Based on this information, it is possible that the applicant was absent from the United States for a period in excess of 45 days, an absence that would break the continuity of the applicant's residence pursuant to 8 C.F.R. § 245a.15(c)(1). The applicant's explanation as to why she possesses receipts issued by a Houston business while she was still a resident of Philadelphia is reasonable, and the AAO removes the director's finding concerning these receipts. However, the applicant has failed to submit credible independent evidence to resolve the inconsistency concerning her absence from the United States to give birth to her son, particularly because information concerning the absence submitted by the applicant raises, but does not resolve, questions as to whether this absence broke the continuity of the applicant's residency.

Due to the applicant's failure to submit sufficient credible evidence of continuous residence from January 1, 1982 through May 4, 1988, the applicant has not met her burden of proof in showing that she continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. Accordingly, the applicant has not established eligibility to adjust status to Legal Permanent Resident status under section 1104 of the LIFE Act.

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