

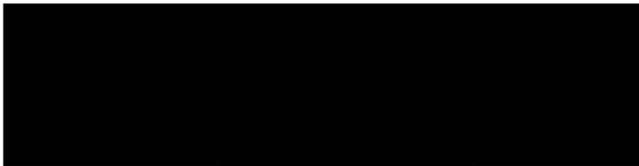


U.S. Citizenship
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Services

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FILE:

MSC 02 236 60416

Office: DALLAS

Date: OCT 20 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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. 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. Wieman, 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, Dallas, 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 since before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the documentation submitted by the applicant is probative and that the applicant has met her burden of proof in establishing eligibility.

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 "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.

Although Citizenship and Immigration Services' (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). In this case very little original documentation has been submitted and the applicant relies solely on affidavits to establish eligibility.

In an attempt to establish continuous unlawful residence since December 1981, as claimed by the applicant, the applicant initially furnished no evidence.

On June 13, 2003, the applicant was sent a Form I-72 requesting additional evidence. Specifically, CIS requested evidence of having resided illegally in the United States from January 1, 1982 to May 4, 1988, and directed the applicant to 8 C.F.R. § 245a.2 for instructions on submitting letters or affidavits.

On September 9, 2003, in response to the I-72, the applicant submitted two letters of recommendation and a letter of employment. Each of the letters were written in 2003 and none of the letters articulate that the applicant has been residing unlawfully in the United States since before January 1, 1982.

Subsequently, the director sent the applicant a notice of intent to deny (NOID), which requested that the applicant submit additional evidence of continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and continuous physical presence in the U.S. from November 6, 1986 through May 4, 1988. However, the applicant has failed to provide any additional evidence.

On February 25, 2004, the director denied the petition based on the reasons laid out in the NOID.

On appeal counsel for the applicant asserts that the record establishes the applicant's eligibility and submits the following documents:

1. An affidavit dated July 29, 2004 from [REDACTED] attesting that the applicant donated time as a volunteer at the Burbank Elementary School from January 1982 through June of 1985. The affidavit also states that the applicant, who was 19 at the time, was taking care of her nephews who were enrolled at the school.
2. A letter dated March 6, 2004 from Our Lady of Guadalupe Church written for the applicant's spouse, [REDACTED]. In the letter the [REDACTED] makes a notation that the applicant lived with [REDACTED] at [REDACTED] San Diego California from January 1981 through February 1985.

As stated above, the inference to be drawn from the documentation provided shall depend on the *extent* of the documentation. The extremely minimal evidence furnished cannot be considered extensive, and in such cases a negative inference regarding the claim may be made as stated in 8 C.F.R. § 245a.12(e). Further, the second item was not written on behalf of the applicant, and is inconsistent with the applicant's assertions as to her initial arrival. The letter written by Our Lady of Guadalupe Church asserts that the applicant lived with her husband at the stated address from January of 1981, however the applicant states that she first arrived in December of 1981. This document contradicts the applicant's assertions and sheds doubt as to the accuracy of [REDACTED] recollections 21 years after the facts in question.

The applicant in this case asserts that she has resided continuously in the U.S. since December of 1981 — a period in excess of 22 years. Nevertheless, she has only been able to provide CIS with *one* affidavit in support of her claim of residence. Counsel for the applicant states that a certificate of appreciation supports the applicant's claim in reference to the affidavit from [REDACTED]. However, the certificate of appreciation from Burbank Elementary was for the school year 1983 – 1984, and was issued by the principal of the school, not [REDACTED]. Further, it raises doubts that the applicant was not able to provide any contemporaneous documentation to corroborate her claim, such as school records, affidavits from the nephews she was allegedly looking after, or other witnesses more directly involved with her alleged volunteer service. In addition, the affidavit written by [REDACTED] is a 22 year old recollection which lacks specific details and is not verifiable. It's probative value is very low, and the assertions contained therein are contradicted by the only other piece of evidence submitted to show continuous unlawful presence from December of 1981.

In *Matter of E-- M--*, *supra*, the applicant had established eligibility by submitting (1) the original copy of his Arrival-Departure Record (Form I-94), dated August 27, 1981; (2) his passport; (3) affidavits from third party individuals; and (4) an affidavit explaining why additional original documentation is unavailable. Unlike the alien in *Matter of E-M-*, the present applicant does not offer any explanation as to *why* she has been unable to provide additional evidence to support her claim. According to the interviewing officer's notes on November 20, 1990, the applicant was unable to provide any details

regarding her purported 1981 arrival into the U.S. In the opinion of the interviewing officer, the applicant's testimony was generally lacking in overall credibility.

Given the absence of any contemporaneous documentation, along with the applicant's reliance on a single affidavit, it is concluded that she has failed to establish continuous residence in the U.S. for the required period.

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