



U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

PUBLIC COPY

L2

FILE:

MSC 02 138 60959

Office: LOS ANGELES

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. 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. Wienmann, 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, Los Angeles, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The 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. In particular, the director found that the evidence of the applicant's residency in the United States for the years 1981, 1982, and 1983 was "modified" and therefore not credible.

On appeal, counsel contends that the applicant did not modify any evidence and submits additional affidavits as proof of residency.

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 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.

Here, the submitted evidence is not relevant, probative, and credible.

In the Notice of Intent to Deny (NOID), the director stated that evidence of residency for the years 1981, 1982, and 1983 was "modified", but did not indicate specifically which documents were modified or

how they were modified. In the decision, the director noted that the applicant “failed to submit a rebuttal to the proposed grounds for denial” and denied the application. Neither the NOID nor the decision contains a specific explanation of the deficiencies in the evidence of residency submitted by the applicant other than stating that this evidence has been “modified.”

A review of the record reveals at least two documents that have been altered. First, the applicant submitted a hospital record from the [REDACTED] Comprehensive Health Center bearing the date of November 20, 1981. However, the form itself has revision dates of 1994 and 1998. Also, while it appears on the face of the document that it was issued in 2001, the document shows physical signs that the abbreviation [REDACTED] was modified to read [REDACTED]. In addition, this document, if actually issued on November 20, 1981, was issued to the applicant in the United States prior to December 1981, the month in which, according to the other evidence in the record, the applicant first entered the United States.

Second, the applicant submitted a *MoneyGram* receipt bearing her name as sender and a date of June 14, 1983. This date shows physical signs of having been added after a previously appearing date was erased. The date of creation on the receipt form is listed as December 1994. The receipt also lists the applicant’s address as [REDACTED] which is inconsistent with the other evidence on record concerning the applicant’s address in 1983.

In addition to these documents, the applicant also submitted the following evidence to establish continuous unlawful residence from before January 1, 1982 through May 4, 1988, and particularly in the years 1981, 1982 and 1983:

- (1) Affidavits dated November 26, 2004 and February 9, 2002 from [REDACTED] stating that the affiant has known the applicant as a friend since December 1981 when they met on a bus in Los Angeles, and has had regular contact with the applicant in Los Angeles since that time.
- (2) An affidavit dated September 25, 2004 from [REDACTED] the applicant’s daughter born on February 16, 1977, stating that the applicant left for the United States when the affiant was four years old, and that the affiant and her brother joined their parents in the United States when the affiant was eleven.
- (3) An affidavit dated February 11, 2002 from [REDACTED] stating that she has known the applicant as a friend in Los Angeles since January 1982.
- (4) Affidavits dated February 9, 2002 and November 6, 1990 from [REDACTED] the applicant’s common-law husband, stating that the applicant and the affiant have been living together in Los Angeles from December 1981 through that date.
- (5) An affidavit dated November 1, 1990 from [REDACTED] stating that he has known the applicant as a friend in Los Angeles since December 1981.

- (6) An affidavit dated October 29, 1990 from [REDACTED] stating that he has known the applicant in Los Angeles since December 1981 and that the applicant and the affiant resided at the same residence in Los Angeles until December 1988.
- (7) An affidavit dated October 28, 1990 from [REDACTED] stating she has known the applicant as a friend in Los Angeles since February 1982.

The majority of these affidavits are standardized forms containing blanks that appear to have had been filled in with a typewriter. A date on the affidavit of [REDACTED] appears to have been changed from some previously listed date to 1988, but is unclear from reviewing the original document in the file if this change was made before the affidavit was signed or if it occurred later. There are no apparent modifications to the other affidavits.

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 documents. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

While there is no specific regulation which governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements which affidavits from organizations are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information which an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to. See 8 C.F.R. § 245a.2(d)(3)(v).

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the 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, 591-92 (BIA 1988).

The applicant has failed to adequately rebut the director's assertion that she submitted documents that have been modified from their original form. The alterations apparent in at least two documents in the record bear directly on the issue of the applicant's residency in the United States during the required period. The applicant has also not provided an explanation for the lack of authentic contemporaneous documents demonstrating her residency in the United States during the required period. The majority of the aforementioned affidavits do not list the addresses where the applicant resided, and are thus of limited probative value.

As the applicant has not submitted credible evidence of residency, she therefore has not met her burden of proof in showing that she had 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.