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**U.S. Citizenship
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SEP 11 2006

MSC 02 246 66112

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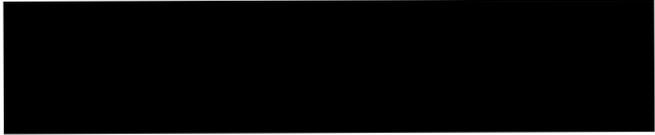
Applicant:



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. The file has 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, Phoenix, 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. The director found the evidence for the years 1982 and 1983 to be insufficient.

On appeal, counsel asserts that the applicant was able to acquire additional evidence that the applicant was unlawfully present during the required time, and submits an additional affidavit and the applicant's own statement.

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.

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).

In an attempt to establish continuous unlawful residence since November 1981, as claimed on the applicant's Biographic Information Form G-325A, through 1983, the applicant furnished an affidavit dated November 9, 1989, from [REDACTED], stating that the applicant babysat for her from November of 1981 through June 1983, an affidavit from [REDACTED] stating that the applicant had been living in Phoenix, Arizona from November 1981 to the date of the statement; and several affidavits or statements from the applicant's sister [REDACTED]. No other evidence was provided to establish residence for that period.

On February 11, 2004, the director requested that the applicant provide further documentation of qualifying unlawful presence and present it at interview on May 11, 2004. However, no further evidence was provided.

Subsequently, the director sent the applicant a notice of intent to deny, which requested that the applicant submit additional evidence of continuous unlawful residence in the U.S. from 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 failed to provide any additional evidence. Now, on appeal, the applicant has submitted one additional affidavit to establish unlawful presence in the United States from November of 1981. [REDACTED], the applicant's nephew, states that the applicant used to take care of him when he attended kindergarten, starting in September 1981.

As stated above, the inference to be drawn from the documentation provided shall depend on the *extent* of the documentation. The minimal evidence furnished in this case for the November 1981 through December 1983 period cannot be considered extensive.

In this case, the director pointed out that statements from the applicant and the applicant's sister are inconsistent. In her March 30, 2003 statement the sister explained that the applicant began school in the United States in January 1982, after having entered the country in 1981 and having not attended school the first year she was here. Thus, it appears the sister may have meant to indicate January 1983 as the commencement of school attendance by the applicant. However, in an affidavit dated November 30, 1989, the sister indicated that she sent the applicant to school for the period of 1984-89. The applicant, in an affidavit dated the same day, stated she attended from January 1983 through 1988. The school records show she began attending in January 1984.

On Form I-687, dated November 28, 1989, the applicant indicated she lived at [REDACTED] Phoenix, from October 1981 to March 1988, and at [REDACTED] in Phoenix from March 1985 to March 1988. She showed that she lived at [REDACTED] from March 1988 to November 1989. However, on an attachment to her LIFE application filed on June 3, 2002, the applicant showed that she lived at the [REDACTED] address from September 1981 to May 1985, and at the [REDACTED] address from May 1985 to May 1989, with no mention of the [REDACTED] address. The applicant has not addressed these discrepancies.

Ms. [REDACTED] in her affidavit, simply stated that she met the applicant at a party and knows the applicant has lived in the United States since November 1981. She did not complete the part of the affidavit in which she was to indicate the longest period of time that she had not seen the applicant.

It is noted that [REDACTED] has stated that the applicant took care of him when he attended kindergarten. Thus, he has based his statement, made on December 13, 2004 when he was 23 years old, on his remembrance of events that took place when he was five years old. It is noted that this affidavit, and the others, are not supported by any objective, verifiable documentary evidence.

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, raising the question of why, after twice requested by the director, the applicant has only just now presented additional evidence.

It is further noted that the applicant was able to provide satisfactory contemporaneous evidence of residence for the years 1984 through 1988. Her inability to provide any contemporaneous evidence from 1982 and 1983 raises very significant questions as to when she first came to the United States.

Given the absence of any contemporaneous documentation for the period in question, along with the applicant's reliance on questionable affidavits, 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.