



U.S. Citizenship
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APR 16 2007

FILE:

MSC 01 296 60694

Office: LOS ANGELES

Date:

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. Any further inquiry must be made to that office.

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, Los Angeles, California, 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 from before January 1, 1982 through May 4, 1988.

On appeal, the applicant asserts that she has been physically present in the United States since March 1980. The applicant provides copies of previously submitted documents in support of the appeal.

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 the 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. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant indicated on her Form I-687 application signed on December 29, 1989 that she has been receiving public assistance since 1985 and listed no employment.

At the time the applicant filed her LIFE application on July 23, 2001, she presented no evidence of her continuous unlawful residence since before January 1, 1982 through May 4, 1988. During her LIFE interview on April 11, 2002, the applicant was issued a Form I-72 requesting she submit evidence of her continuous

unlawful residence since before January 1, 1982 through May 4, 1988 as well as financial documentation establishing that she would not likely to become a public charge. The applicant, in response, submitted:

- A prescription dated January 27, 1987 issued by [REDACTED] a medical doctor in Gardena, California. The prescription listed the applicant's address as [REDACTED] Long Beach.
- A document dated September 28, 1987 from the California Department of Health Services Vital Statistics Branch addressed to the applicant at [REDACTED] Wilmington.
- A gas deposit bill dated November 5, 1987 and a gas bill dated March 8, 1988 for the period January 5, 1988 through March 7, 1988 addressed to the applicant at [REDACTED]
- A receipt for proof of Medi-Cal eligibility dated December 17, 1986 from the Los Angeles County Department of Health Services addressed to the applicant at [REDACTED] Wilmington.

The director issued a Notice of Intent to Deny dated September 28, 2004, advising the applicant that she had failed to submit any documentation to establish continuance residence since before January 1, 1982 through 1985. The applicant was granted 30 days in which to explain the discrepancies or rebut any adverse evidence. The applicant, however, failed to respond to the notice. Accordingly, on January 5, 2005, the director denied the application.

On appeal, the applicant submits:

- A document from the City of Long Beach Department of Public Health dated December 11, 1983 along evidence of receiving aid from the Public Health Foundation WIC Program from September 7 1984 through October 30, 1987.
- A California identification card issued on February 13, 1985 listing the applicant's address as [REDACTED] Wilmington.
- A bill dated April 28, 1988 from Southern California Edison Company for services from March 26, 1988 through April 25, 1988.
- Her children's September 14, 1984 and October 5, 1986 birth certificates.
- A letter dated August 23, 1986 from California Children Services indicating that the applicant did not apply for Medi-Cal for her son.
- A notarized affidavit dated January 24, 2005 from [REDACTED] of Wilmington, California, who indicated that the applicant resided and worked as a babysitter in her home for three years. The affiant attested to the applicant's residence in Wilmington, California since March 1980.

Pursuant to the Special Rule set forth in 8 C.F.R. § 245a.18(c)(2)(d)(3), the AAO concludes that the applicant has shown a consistent employment history (wage and tax statements) since 1993 to establish that she will not likely become a public charge. Therefore, we do not find the applicant inadmissible under section 212(a)(4) of the Immigration and Nationality Act.

The applicant has submitted sufficient evidence to establish continuous unlawful residence from September 1984 through May 4, 1988. However, there is a significant period of time that has not been accounted for, namely prior to January 1, 1982 through August 1984. The AAO does not view the remaining documentation as substantive enough to support a finding that the applicant continuously resided in the United States this period in question. Specifically, [REDACTED] attested to the applicant's residence and employment with her from March 1980 for three years. The applicant, however, claimed on her Form I-687 application that she had no employment during the requisite period and listed her residence in the United States from January 1981. The applicant claimed to have resided at [REDACTED], but provided no evidence such as a lease agreement, rent receipts, utility bills or affidavits from affiants to corroborate this residence.

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). Given the applicant's reliance of a single affidavit from [REDACTED], which has been discredited, it is concluded that she has failed to establish continuous residence in an unlawful status from prior to January 1, 1982 through May 4, 1988, as required. Therefore, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

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