



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
MSC 01 297 60414

Office: LOS ANGELES

Date: JAN 18 2007

IN RE: Applicant: [REDACTED]

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:

[REDACTED]

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, 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. The director found that the applicant was in lawful status during the period. The director determined that the applicant entered in lawful F-1 status in 1980 but failed to prove that the government was aware that she had violated and overstayed that status by January 1, 1982. The director also determined that the applicant had failed to submit evidence of residency in the United States for the years 1982 through 1984.

On appeal, counsel asserts that the record shows the government was aware that the applicant was not longer attending school as of August 1981. Counsel also asserts that the applicant has submitted sufficient evidence of residency for the period from before January 1, 1982 through May 4, 1988.

Section 1104(c)(2)(B) of the LIFE Act states:

- (i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.
- (ii) Nonimmigrants – In the case of an alien who entered the United States as a nonimmigrant before January 1, 1982, such alien must establish that the period of authorized stay as a nonimmigrant expired before such date through the passage of time or that the alien's unlawful status was known to the Government as of such date.

The word "Government" means the government of the United States. An alien who claims his unlawful status was known to the government as of January 1, 1982, must establish that prior to January 1, 1982, documents existed in one or more government agencies so, when such documentation is taken as a whole, it would warrant a finding that the alien's status in the United States was unlawful. *Matter of P-19 I. & N. Dec. 823 (Comm. 1988).*

Congress provided only two ways in which an applicant who had been admitted as a nonimmigrant could establish eligibility for permanent residence under the LIFE Act. The first was to clearly demonstrate the authorized period of stay expired prior to January 1, 1982. The second was to show that, although the authorized stay had not expired as of January 1, 1982, the applicant was nevertheless

in an unlawful status that was known to the Government as of that date. In doing so, Congress acknowledged it was possible to have an authorized stay and yet still be unlawful due to another reason, such as illegal employment. However, the LIFE Act very clearly states that the unlawfulness had to have been known to the Government as of January 1, 1982.

As cited above, pursuant to section 1104(c)(2)(B)(i) of the LIFE Act, the regulations prescribed by the Attorney General under section 245A(g) of the INA that were most recently in effect before the date of the enactment of the LIFE Act shall apply to determine whether an alien maintained continuous unlawful residence in the United States. Therefore, eligibility also exists for an alien who would otherwise be eligible for legalization and who was present in the United States in an unlawful status prior to January 1, 1982, and reentered the United States as a nonimmigrant in order to return to an unrelinquished unlawful residence. 8 C.F.R. §245a.2(b)(9). An alien described in this paragraph must receive a waiver of the inadmissibility charge as an alien who entered the United States by fraud. Section 212(a)(6)(C) [previously number Section 212(a)(19)] of the INA, 8 U.S.C. § 1182(a)(6)(c); 8 C.F.R. § 245a.2(b)(10).

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 the applicant has demonstrated that her lawful status expired in August 1981, a fact known to the government, the applicant has failed to prove that that she had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

The record contains a copy of the applicant's I-94 showing that the applicant was admitted on August 14, 1980 in F-1 status until August 7, 1981. The record shows that the applicant attended the American Graduate School of International Management and was awarded a Master of International Management degree on August 7, 1981. The record also contains a copy of a Form I-542 issued to the applicant on August 31, 1981 stating that the Immigration and Naturalization Service "understands that [the applicant] is no longer attending school." This evidence is sufficient to demonstrate that the applicant's period of authorized stay as a nonimmigrant expired before January 1, 1982.

Nevertheless, the director correctly determined that the applicant has failed to submit credible evidence of residency for the years 1982, 1983 and 1984. The applicant has indicated that from August 1981 through December 1987, she lived with and worked as an employee for [REDACTED]. The record contains an affidavit from Ms. [REDACTED] in which Ms. [REDACTED] attests to these facts and also indicates that "taxes have been withheld from [the applicant's] pay." However, Social Security records submitted by the applicant do not support this claim. According to these documents, the first year of the applicant's reported employment in the United States was 1985. Furthermore, these records indicate that the applicant's employers in 1985, 1986 and 1987 were [REDACTED] of America, [REDACTED] Corporation and [REDACTED] Corporation, respectively, none of which the applicant has listed as an employer. The applicant has also submitted photographs of herself she claims were taken in 1982, 1983 and 1984, but it is not possible to determine the dates on which these photographs were actually taken.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant 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 applicant'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 failed to resolve the inconsistencies noted above and submit sufficient credible evidence of residency for the years in question.

The applicant has not met her burden of proving continuous residence in an unlawful status in the United States 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.