



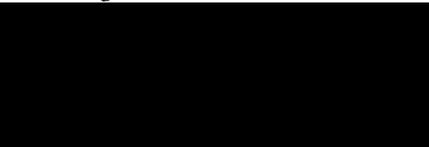
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Office: CHICAGO

Date: JUL 06 2007

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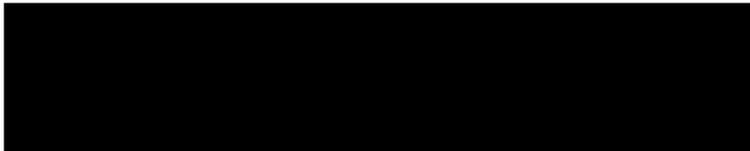
Applicant:



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. 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, Chicago, 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.

In appealing the decision, counsel asserted that the applicant submitted sufficient evidence to establish residency by a preponderance of the evidence and that the director erred in denying the application without stating with specificity all the reasons for the decision. Counsel submitted a brief in support of the appeal.

On May 17, 2007, the AAO issued a notice of intent to dismiss the appeal on the basis that the applicant's evidence of residency contained inconsistencies and was otherwise insufficient to meet the applicant's burden of proof.

In response to this notice, counsel submits an affidavit from the applicant.

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. To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony. 8 C.F.R. § 245a.12(f). 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).

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 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).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must be on employer letterhead stationery, if the employer has such stationery, and must include the following:

- (A) Alien's address at the time of employment;
- (B) Exact period of employment;
- (C) Periods of layoff;
- (D) Duties with the company;
- (E) Whether or not the information was taken from official company records; and
- (F) Where records are located and whether the Service may have access to the records.

The regulation further allows that if official company records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and explaining why such records are unavailable may be submitted in lieu of meeting the requirements at (E) and (F) above.

Here, the submitted evidence is not sufficiently relevant, probative, and credible to meet the applicant's burden of proof.

As indicated above, on the Form to Determine Class Membership, which the applicant signed under penalty of perjury on March 4, 1991, the applicant indicated that she first entered the United States in June 1978. On her Form I-687, Application for Status as a Temporary Resident, which the applicant signed under penalty of perjury on January 27, 1990, the applicant indicated that she resided at [REDACTED] in Chicago, Illinois from June 1978 to December 1980; [REDACTED] in Chicago from April

1981 to August 1982; [REDACTED] in Chicago from September 1982 to March 1988; and [REDACTED] in Chicago from April 1988 to the date the form was signed. The applicant did not list any employment prior to September 1988.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence throughout the application process:

- An undated statement from the applicant's brother, [REDACTED] of Lindenhurst, Illinois, attesting that the applicant resided with him "for some time" after coming to the United States in 1981. [REDACTED] avers that the applicant has resided continuously in the United States since 1981.
- An undated statement from [REDACTED] the applicant's sister-in-law, stating that she has known the applicant since the applicant came to the United States in 1981 and knows that the applicant has resided continuously in the United States since that time.
- A letter dated August 6, 2003 from [REDACTED] of Chicago, Illinois attesting that she has known the applicant since 1982 and that the applicant has worked for her "as a housekeeper for many years."
- An affidavit notarized on July 29, 2003 from [REDACTED] of Chicago, Illinois stating that she has known the applicant since July 1981.
- A letter dated July 28, 2003 from [REDACTED] of Chicago, Illinois, stating that the applicant has provided housekeeping services for him twice monthly since September 1981.
- An affidavit notarized on July 28, 2003 from the applicant's son, [REDACTED] of Rockford, Illinois, attesting that the applicant entered the United States with him in May 1981 and has resided in the United States continuously since that time.
- An affidavit notarized on November 16, 1990 from the applicant's brother, [REDACTED] stating that the applicant resided with him at [REDACTED] in Chicago, Illinois from September 1982 to March 1988.
- An affidavit notarized on November 16, 1990 from the applicant's brother, [REDACTED] of Chicago, Illinois, stating that he knows that the applicant has resided at [REDACTED] in Chicago from March 1988 to that date.
- An affidavit notarized on November 16, 1990 from [REDACTED] the applicant's sister-in-law, stating that she knows the applicant has resided in the United States since September 1982.

- An affidavit notarized on November 16, 1990 from [REDACTED] of Chicago, Illinois stating that she knows the applicant has resided in the United States since September 1982.
- A lease agreement apparently signed by the applicant's spouse for the premises at [REDACTED] in Chicago, Illinois for the period April 1, 1988 to April 1, 1989.
- An automobile loan contract dated October 8, 1988 between Cook County Federal Savings and the applicant.
- Several pay stubs for the applicant's spouse.
- Photographs of the applicant purportedly taken during the qualifying period.

On March 01, 2004, the director issued a Notice of Intent to Deny (NOID) stating "there has been no evidence of the existence of primary or secondary evidence as outlined," and indicating that although the affidavits and other documentation submitted by the applicant had been considered, the applicant had not established residency by a preponderance of the evidence. The director cited the regulation at 8 C.F.R. § 103.2(b) as containing the evidentiary criteria not met by the applicant.

In the decision to deny the application dated February 23, 2005, the director noted that the applicant had not responded to the NOID. The director restated the grounds for denial found in the NOID and denied the application.

As stated above, counsel asserted on appeal that the applicant has submitted sufficient evidence to establish residency by a preponderance of the evidence. Citing *Matter of Pradiou*, 19 I. & N. Dec. 419 (BIA 1986), counsel maintains that the director improperly denied the application without giving specific reasons for rejecting the evidence submitted by the applicant or attempting to verify the testimony of third-party affiants.

The director incorrectly cited the regulation at 8 C.F.R. § 103.2(b) as containing the only evidentiary standard applicable in LIFE Act cases. As stated above, although the LIFE Act 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). All relevant material is to be considered in making a final decision. 8 C.F.R. §245a.20(2).

Furthermore, the director's decision does not list any specific deficiencies in the applicant's evidence. An applicant for adjustment of status under the LIFE Act shall be notified in writing of the decision of denial and of the reason(s) therefore. 8 C.F.R. § 245a.20(a)(2). When an adverse decision is proposed, the Service shall notify the applicant of its intent to deny the application and the basis for the proposed denial. *Id.*

Generally, the Service is required to advise an applicant of derogatory information that will constitute the basis of the denial of an application, and give the applicant an opportunity to rebut the information

and present information in his/her own behalf before the decision is rendered, if the applicant is *unaware* of the information. 8 C.F.R. § 103.2(b)(16)(i) (emphasis added). However, LIFE Act regulations also require that if inconsistencies are found between information submitted with the adjustment application and information previously furnished by the alien to the Service, the alien shall be afforded the opportunity to explain discrepancies or rebut any adverse information. 8 C.F.R. § 245a.20(a)(2).

Accordingly, the AAO issued a notice of intent to dismiss the appeal on May 17, 2007 listing specific deficiencies in the applicant's evidence of residency and allowing the applicant 30 days to offer substantial evidence addressing, explaining and/or rebutting them. Specifically,

1. The applicant testified on her Form I-687, Application for Status as a Temporary Resident, which she signed under penalty of perjury on January 27, 1990, and on her Form to Determine Class Membership, which the applicant signed under penalty of perjury on March 4, 1991, that she first entered and established residence in the United States in June 1978. This testimony contradicts the statements of applicant's brother, son and sister-in-law that she first entered the United States in 1981.
2. [REDACTED] and [REDACTED] indicate in affidavits submitted in support of the application that they employed the applicant as a housekeeper during the qualifying period, but the applicant's Form I-687 does not list this employment or any other employment prior to September 1988. Neither [REDACTED] or [REDACTED] list the applicant's address(es) during the time of her employment.
3. Neither [REDACTED] nor [REDACTED] list in their affidavits submitted in support of the application the address(es) where the applicant resided throughout the entire period they have known her or provide adequate details concerning the basis for their acquaintance with the applicant or the origin of the information being attested to in their affidavits.
4. The dates on which the photographs the applicant submitted were taken, as well as the location depicted in the photographs, cannot be ascertained. Consequently, such evidence has no probative value in demonstrating residency in the United States during the qualifying period.

In response to the AAO's notice, counsel submits an affidavit from the applicant. In the affidavit, the applicant explains that she told her former attorney, [REDACTED] that she first entered the United States in May 1981 and "cannot account for how the wrong information got on the application." The applicant maintains that neither she nor [REDACTED] have indicated that he "employed" the applicant, but only that she performed housekeeping services for him. The applicant asserts that neither she nor Mr. [REDACTED] "consider this to be employment," which is why she did not list it or her "many other part-time jobs" on her application. Finally, the applicant explains that several of the third-party affidavits she submitted do not contain the addresses at which she resided "because the people who wrote them could not remember the addresses."

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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 (BIA 1988).

The AAO finds that the evidence submitted by the applicant fails to adequately address the noted deficiencies in her evidence of residency. The applicant's statement that she does not know how "wrong" information was included in her applications is not a sufficient explanation for an inconsistency that involves not just the date of her initial entry, but specific information concerning her address in the United States prior to 1981. The applicant states that she did not consider her work for [REDACTED] employment, but she does not state that she was unpaid for her services, or that she received no compensation for the "many other part-time jobs" she chose not to list on her Form I-687. In his letter, [REDACTED] states that he recommended the applicant's services "to many of [his] friends, who utilize her services...." Finally, the lack of detail in the other third-party affidavits submitted by the applicant decreases their probative value.

The applicant has submitted conflicting evidence concerning her date of entry and residences in the United States. It is reasonable to expect her to offer credible explanations as to why she has submitted the contradictory information and/or adequately resolve the contradictions through additional credible evidence. The applicant has failed to present sufficient credible evidence of residency that adequately addresses the discrepancies noted previously. These discrepancies raise questions about the authenticity of the remaining evidence the applicant has presented in attempt to continuous residence in the United States prior to January 1, 1982 through May 4, 1988.

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). When viewed in its totality, the evidence in the record demonstrates that it is probable that the applicant resided in the United States from before January 1, 1982 through May 4, 1988.

Given the unresolved discrepancies and inadequacies in the evidence submitted by the applicant, the AAO determines that she has not met her burden of proof. The applicant has not established, by a preponderance of the evidence, that she entered the United States before January 1, 1982, and resided in this country in an unlawful status continuously since that time through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b).

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