

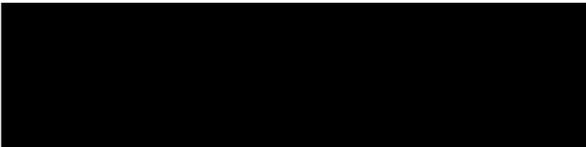


U.S. Citizenship
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Services

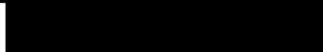
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FILE:



Office: Los Angeles

Date:

JUL 10 2007

MSC 01 355 61638

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. 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 since before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the applicant has submitted sufficient evidence to support her claim of continuous residence in this country since prior to January 1, 1982. Counsel contends that any purported discrepancy in the applicant's employment history was minimal as the applicant had not been asked about employment with the Sewing Manufacture Company and had not been given an opportunity to explain the purported discrepancy.

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. Section 1104(c)(2)(B) of the LIFE Act and 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 under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982 to May 4, 1988, the submission of any other relevant document including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to 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. Here, the submitted evidence is not relevant, probative, and credible.

The applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (Act) on January 22, 1996. The record shows that the individual who prepared the Form I-687 application is the applicant’s counsel of record. At part #4 of the Form I-687 application where applicants were asked to list other names used or known by, counsel listed [REDACTED] as the only other name the applicant was known by. In addition, counsel failed to list any information at part #19 of the Form I-687 application where applicants were asked to list all Social Security numbers used. At part #32 of the Form I-687 application where applicants were asked to provide information relating to their immediate family, counsel listed [REDACTED] as one of the applicant’s seven sisters. At part #33 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, counsel listed the applicant residences as [REDACTED] in Compton, California from 1981 to 1987 and [REDACTED] in Rancho Cucamonga from 1987 to February 1993. Further, at part #36 of the Form I-687 application where applicants were asked to list all employment in the United States since first entry, counsel listed the applicant’s only employment during the requisite period as a housekeeper for [REDACTED] in Rancho Cucamonga, California from 1987 to February 1993.

The record shows that the applicant was also interviewed by an officer of the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) when she filed her Form I-687 application on January 22, 1996. The notes of the interviewing officer reflect that the applicant claimed that she also used the name [REDACTED] in 1987, had been paid by check while using this name, had subsequently filed a Workers’ Compensation claim using this name, and had been awarded \$5,000.00 in settlement of such claim.

In cases where an applicant claims to have met any of the eligibility criteria under an assumed name, the applicant has the burden of proving that he or she was in fact the person who used that name. 8 C.F.R. § 245.2(d)(2)(i).

The most persuasive evidence of common identity is a document issued in the assumed name which identifies the applicant by photograph, fingerprint or detailed physical description. Other evidence which will be considered are affidavit(s) by a person or persons other than the

applicant, made under oath, which identify the affiant by name and address and state the affiant's relationship to the applicant and the basis of the affiant's knowledge of the applicant's use of the assumed name. Affidavits accompanied by a photograph which has been identified by the affiant as the individual known to the affiant under the assumed name in question will carry greater weight. Other documents showing the assumed name may serve to establish the common identity when substantiated by corroborating detail. 8 C.F.R. § 245.2(d)(2)(ii).

The applicant submitted nine paycheck stubs from Western Wire Works Inc., in Vernon, California containing Social Security number [REDACTED] postmarked envelopes, letters from an attorney, medical records and a document from the Workers' Compensation Appeals Board for the State of California all of which bear the name [REDACTED]. However, the applicant failed to submit any documentation containing corroborating details as specified in 8 C.F.R. § 245.2(d)(2)(ii) to substantiate that she used the name [REDACTED]. As noted above, counsel listed [REDACTED] as the only other name the applicant was known by at part #4 of the Form I-687 application where applicants were asked to list other names used or known by without any indication that the applicant used the name "Imelda [REDACTED]". Further, counsel did not list [REDACTED] as a Social Security number that had been used by the applicant at part #19 of the Form I-687 application where applicants were asked to list all Social Security numbers used. In addition, counsel failed to include Western Wire Works Inc., as one of the applicant's employers at part #36 of the Form I-687 application where applicants were asked to list all employment in the United States since first entry. Moreover, counsel listed [REDACTED] as one of the applicant's seven sisters at part #32 of the Form I-687 application where applicants were asked to provide information relating to their immediate family. Consequently, it must be concluded that documents bearing the name [REDACTED] relate to the applicant's sister rather than the applicant herself. The applicant has failed to meet her burden of proving that she was in fact the person who used that name as required by 8 C.F.R. § 245.2(d)(2)(i).

The applicant provided three identical affidavits that are signed by [REDACTED] and [REDACTED] respectively. All three affiants state that they have known the applicant since 1981 because they worked with her at the Sewing Manufacture Company at 8th and Spring in Los Angeles, California from 1981 to 1986. However, the testimony of these three affiants is in conflict with the testimony contained in the Form I-687 application as counsel failed to list the Sewing Manufacture Company as one of the applicant's employers at part #36 of the Form I-687 application where applicants were asked to list all employment in the United States since first entry.

The applicant included a letter signed by [REDACTED] who declared that he had personal knowledge that the applicant was a resident of California since 1981 and that she was a person of good character and moral values. [REDACTED] also provided a photocopy of his business card within the body of the letter. However, [REDACTED] failed to state the source of his knowledge regarding the applicant's residence in California since 1981. Further, [REDACTED] failed to provide any specific and verifiable testimony, such as the applicant's address(es) of residence,

that would tend to corroborate her claim of residence in the United States from prior to January 1, 1982 to May 4, 1988.

The record shows that the applicant filed her Form I-485 LIFE Act application with the Service on September 20, 2001. In support of her claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted an affidavit that is signed by [REDACTED] stated that his wife, [REDACTED] was the applicant's sister and the applicant had lived with him and his wife at [REDACTED] in Compton, California from 1981 to 1986. However, [REDACTED]'s testimony relating to the applicant's place of residence in this period directly contradicted the testimony contained in the Form I-687 application as counsel listed the applicant residence as [REDACTED] in Compton, California from 1981 to 1987 at part #33 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry. In addition, [REDACTED] failed to attest to the applicant's residence in this country from 1987 to May 4, 1988.

The applicant provided an affidavit that is signed by [REDACTED] noted that she first met the applicant through an acquaintance in 1982. [REDACTED] indicated that the applicant occasionally cleaned her home beginning in 1982 until 1987 when the applicant found another job. However, [REDACTED] testimony is in conflict with the testimony contained in the Form I-687 application as counsel failed to list [REDACTED] as one of the applicant's employers at part #36 of the Form I-687 application where applicants were asked to list all employment in the United States since first entry.

The district director issued a notice of intent to deny dated May 24, 2004 to the applicant informing her of CIS' intent to deny her LIFE Act application because she failed to submit sufficient credible evidence of continuous unlawful residence in the United States for the period in question. The district director noted that the applicant had submitted three affidavits attesting to her employment at the Sewing Manufacture Company despite the fact that this enterprise was not listed among the applicant's employers at part #36 of the Form I-687 application. The applicant was granted thirty days to respond to the notice.

In response, counsel submitted a statement in which she asserted that any purported discrepancy in the applicant's employment history was minimal as the applicant had not been asked about employment with the Sewing Manufacture Company and had not been given an opportunity to explain the purported discrepancy. However, counsel failed to offer any explanation as to why the Sewing Manufacture Company was not included in the listing of the applicant's employment history in this country at part #36 of the Form I-687 application.

The district director determined that the applicant had failed to submit sufficient credible evidence demonstrating her residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988, and, therefore, denied the Form I-485 LIFE Act application on June 24, 2004.

On appeal, counsel contends that the applicant had submitted sufficient evidence to support her claim of continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. However, the evidence submitted by the applicant relating to her residence in the United States from prior to January 1, 1982 to May 4, 1988 lacks sufficient detail, contains little verifiable information, and both conflicts with and contradicts the substance of the applicant's own testimony regarding her residence in this country for the requisite period.

Counsel contends that any discrepancy in the applicant's employment history was minimal as the applicant had not been asked about employment with the Sewing Manufacture Company and had not been given an opportunity to explain the purported discrepancy. However, the applicant submitted three affidavits attesting to her purported employment at Sewing Manufacture Company from 1981 to 1986, an extended length of time of some five years, but this enterprise was not listed as an employer at part #36 of the Form I-687 application. Neither counsel nor the applicant provides a reasonable explanation as to why the Sewing Manufacture Company was not listed as one of her employers on the Form I-687 application.

Doubt cast on any aspect of the evidence 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. *See Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The absence of sufficiently detailed supporting documentation and the existence of contradictory testimony seriously undermine the credibility of the applicant's claim of residence in this country for the requisite period, as well as the credibility of the documents submitted in support of such claim. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet her burden of proof in establishing that she has resided in the United States since prior to January 1, 1982 to May 4, 1988 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.12(e) and *Matter of E- M-*, 20 I&N Dec. 77.

Given the applicant's reliance upon documents with minimal or no probative value and the conflicting and contradictory testimony contained in the record, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988 as required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis.

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