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FILE:

MSC 02 011 62645

Office: CHICAGO

Date: JUL 12 2007

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

On appeal, counsel asserts that the evidence submitted by the applicant establishes her eligibility for benefits under the LIFE Act. Counsel submits a brief and additional documentation 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. Section 1104(c)(2)(B) of the LIFE Act; 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 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 Citizenship and Immigration Services (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 affidavit to determine class membership, which she signed under penalty of perjury on March 26, 1990, the applicant stated that she first arrived in the United States in September 1981. The applicant did not list any employment during the qualifying period on her Form I-687, Application for Status as a Temporary Resident; however, she stated that she lived at [REDACTED] in Chicago from September 1981 to August 1985, at [REDACTED] in Chicago from September 1985 to May 1987, and at [REDACTED]

Francisco in Chicago from 1988 to the date she completed the Form I-687 application. The applicant admitted to being out of the United States once during the qualifying period, from June to July 1987.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant submitted the following documentation:

1. A copy of an October 25, 2002 letter from the [REDACTED] founder and pastor of the India Mission Telugu Methodist Church in Oak Park, Illinois certifying that the applicant had been a member of the church since November 1981. The letter does not indicate the source of the information contained in the letter and does not indicate the applicant's address at the time of her membership in the church as required by 8 C.F.R. § 245a.2(d)(3)(v).
2. An undated statement from [REDACTED] in which she stated that she knew the applicant from 1981 to 1990. [REDACTED] stated that she knew the applicant based on her friendly terms with the applicant's family. [REDACTED] did not state the circumstances surrounding her initial acquaintance with the applicant or how she dated her relationship with her.
3. A copy of an undated statement from [REDACTED] in which she stated that she knew the applicant from 1985 to 1990. [REDACTED] stated that she knew the applicant based on her friendly terms with the applicant's family. [REDACTED] did not state the circumstances surrounding her initial acquaintance with the applicant or how she dated her relationship with her.
4. A copy of an undated notarized statement from [REDACTED] in which she certified that the applicant was her tenant at [REDACTED] in Chicago from April 1988 to September 1995.

The director issued a Notice of Intent to Deny (NOID) dated March 30, 2004, advising the applicant that the record contained no primary or secondary evidence to establish her claim of residency in the United States from January 1, 1982 through May 4, 1988, or continuous physical presence in the United States from November 6, 1986 through May 4, 1988. The applicant failed to respond to the NOID.

On appeal, counsel states, "The written statements by witnesses . . . generally describe [the applicant's] life in the United States during the 1980s," and that this "clearly demonstrates that there would be no primary documents available to establish her presence in the United States during the relevant period." The applicant submits the following additional documentation on appeal:

1. An April 10, 2004 notarized statement from [REDACTED] reiterating his earlier statement that the applicant had been a member of the church since November 1981, and that she had resided in the United States since September 1981. As with his previous letter, [REDACTED] does not provide the information required by 8 C.F.R. § 245a.2(d)(3)(v). Further, although he states that the applicant has resided in the United States since September 1981, he does not indicate the source of his knowledge regarding her entry into the United States.
2. An April 26, 2004 notarized statement from [REDACTED] in which she certified that she has known the applicant since March 1983. We note that in her earlier statement, [REDACTED] did not indicate a personal acquaintance with the applicant.
3. A copy of an undated statement from [REDACTED] in which he stated that the applicant and her family lived with him at [REDACTED] from September 1984 to September 1985. We note

that on her Form I-687 application, the applicant stated that she lived at [REDACTED] from September 1981 to May 1985.

The applicant submitted only minimum documentation and no contemporaneous documentation to establish her presence and continued residency in the United States from prior to January 1, 1982 through May 4, 1988. Despite counsel's assertions to the contrary, the evidence provided by the applicant does not demonstrate why there would be lack of primary evidence to establish her residency in the United States. Given the absence of any contemporaneous documentation and the lack of details in the supporting statements, it is concluded that the applicant 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.