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U.S. Citizenship
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Services

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FILE:

MSC 02 113 63156

Office: LOS ANGELES

Date:

JUL 26 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:

Self-represented

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 concluded that the applicant's testimony was at variance with the information initially provided on her Form I-687 and Form I-485 applications, thereby casting credibility issues on her claim to have continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. As such, the director denied the application.

On appeal, the applicant asserts that her application was erroneously denied and provides a copy of her marriage certificate.

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).

Here, the submitted evidence is not relevant, probative, and credible. In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence:

- Wage and tax statements for 1986, 1987 and 1988 addressed to the applicant's spouse, [REDACTED], along with uncertified Forms 1040A for the respective years.
- An affidavit notarized May 19, 1990, from [REDACTED] of Los Angeles, California, who attested to the applicant's Los Angeles residence since August 1981.
- An affidavit notarized May 19, 1990, from [REDACTED] of Los Angeles, California, who attested to the applicant's Los Angeles residence since August 1981. [REDACTED] based her knowledge on the applicant having a friendly relationship with her and her daughter.
- An affidavit notarized April 28, 1990, from [REDACTED] of North Hollywood, California, who attested to the applicant's Los Angeles residence since 1981. [REDACTED] asserted that the applicant was her brother's [REDACTED] girlfriend.
- Her daughter's June 16, 1987 birth certificate.
- An identification card which expired on June 30, 1986, from Central Adult High School.
- A receipt dated July 17, 1987.
- A medical card issued in 1987 from the Los Angeles County Department of Social Services.
- An identification card reflecting monthly stamps of February 15, 1986 and March 15, 1986.
- An affidavit notarized October 29, 2001, from [REDACTED] of Los Angeles, California, who indicated that she first met the applicant at a birthday dinner on March 31, 1985.
- An affidavit notarized October 31, 2001, from [REDACTED] of Inglewood, California, who indicated that she has known the applicant since September 1983 and has remained good friends with the applicant since that time.
- An undated letter from [REDACTED] of Lawndale, California, who indicated that he has known the applicant since her arrival in August 1981 "since she is one of my worker's wife." Mr. [REDACTED] attested to the applicant's current address.
- An affidavit notarized October 24, 2001, from a brother, [REDACTED] of Los Angeles, California, who attested to the applicant's entry into the United States in August 1981. Mr. [REDACTED] indicated that the applicant resided with him until May 1986. The affiant asserted that he has remained in contact with the applicant since 1981.
- An affidavit notarized January 12, 2002 from [REDACTED] of Los Angeles, California, who indicated that she met the applicant in 1981 at a wedding party.

The director issued a Notice of Intent to Deny dated August 4, 2004, which advised the applicant of inconsistencies between her applications, oral testimony and documents. Specifically, [REDACTED] attested to the applicant's residence, but did not provide the applicant's address or other probative information. [REDACTED] and [REDACTED] both indicated that the applicant entered the United States in August 1981; however, the applicant indicated on her membership questionnaire that she entered in October 1981. The applicant listed her absence from the United States from August 30, 1987 through September 25, 1987, on her Form I-687 application; however, in a signed statement dated January 12, 2002, the applicant indicated that she reentered the United States on September 5, 1987. The director also noted, "... you failed to list your exit in 1986, as you were married that year in Mexico, according to information found on your G-325A.

A review of the applicant's Form 325A, however, does not support the director's finding regarding the applicant's place of marriage. The applicant indicated on her Form 325A that her marriage took place on September 22, 1986 in the "USA." Furthermore, on appeal, the applicant provides a copy of her marriage certificate, which indicates that her marriage occurred in Los Angeles, California on September 6, 1986. In addition, whether or not the applicant entered the United States in August or October 1981 is irrelevant as either entry occurred prior to the January 1, 1982 for establishing eligibility. 8 C.F.R. § 245a.15(a). The

applicant, however, has not addressed any of the inconsistencies outlined by the director in her Notice of Intent to Deny.

The AAO agrees with the director's findings as the documents discussed above are not substantive enough to support a finding that the applicant entered and began residing in the United States before January 1, 1982 through January 1986. The affidavit from the applicant's brother must be viewed as having a self-evident interest in the outcome of proceedings, rather than as an independent, objective and disinterested third party. Furthermore, the brother provided no address for the applicant during the period in question. The remaining affiants all claimed to have known the applicant at some point during the requisite period, but provide no address for the applicant, and no detail regarding the nature or origin of their relationships with the applicant or the basis for their continuing awareness of the applicant's 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). Based on the evidence in this case, the AAO determines that the applicant 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 from before January 1, 1982 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.