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U.S. Citizenship
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Services

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FILE:



MSC 02 143 63322

Office: LOS ANGELES

Date:

MAR 16 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 on appeal. The appeal will be sustained.

The district director denied the application because: 1) 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; and 2) it was determined that the applicant was likely to become a public charge as defined in 8 C.F.R. § 245a.18(c)(2)(vi).

On appeal, the applicant provides additional documentation along with previously submitted documents in support of the appeal.

The regulation in 8 C.F.R. § 245a.18(c)(2)(vi) states, in pertinent part, if a LIFE Legalization applicant is determined to be inadmissible under section 212(a)(4) of the Act, he or she may still be admissible under the Special Rule described under paragraph (d)(3) of this section. 8 C.F.R. § 245a.18(d) states:

- (1) In determining whether an alien is "likely to become a public charge", financial responsibility of the alien is to be established by examining the totality of the alien's circumstance at the time of his or her application for adjustment. The existence or absence of a particular factor should never be the sole criteria for determining if an alien is likely to become a public charge. The determination of financial responsibility should be a prospective evaluation based on the alien's age, health, family status, assets, resources, education and skills.
- (2) An alien who has a consistent employment history that shows the ability to support himself or herself even though his or her income may be below the poverty level is not excludable under paragraph (c)(2)(vi) of this section. The alien's employment history need not be continuous in that it is uninterrupted. In applying the Special Rule, the Service will take into account an alien's employment history in the United States to include, but not to be limited to, employment prior to and immediately following the enactment of IRCA on November 6, 1986. However, the Service will take into account that an alien may not have consistent employment history due to the fact that an eligible alien was in an unlawful status and was not authorized to work. Past acceptance of public cash assistance within a history of consistent employment will enter into this decision. The weight given in considering applicability of the public charge provisions will depend on many factors, but the length of time an applicant has received public assistance will constitute a significant factor. It is not necessary to file a waiver in order to apply the Special Rule for determination of public charge.
- (3) In order to establish that an alien is not admissible under paragraph (c)(2)(vi) of this section, an alien may file as much evidence available to him or her establishing that the alien is not likely to become a public charge. An alien may have filed on his or her behalf a Form I-134, Affidavit of Support. The failure to submit Form I-34 shall not constitute an adverse factor.

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).

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

- An affidavit notarized November 28, 1989 from [REDACTED] of Los Angeles, California, who attested to the applicant's Los Angeles residence since December 1981. [REDACTED] asserted that the applicant was in her employ as a babysitter from December 1981 to December 1985.
- An affidavit notarized November 30, 1989 from [REDACTED] owner of Lavender (a flower and gift shop) in Los Angeles, California, who indicated that the applicant has been employed since March 1985.
- A statement dated February 7, 2002 from [REDACTED] of Panorama City, California, who indicated that he has been acquainted with the applicant for over 22 years, and attested to the applicant's residence in downtown Los Angeles.
- A receipt dated October 11, 1987 from Giant Express Inc., which listed the applicant's address at [REDACTED], Los Angeles.
- Several rent receipts issued during July 1985 to April 1987, which listed the applicant address at [REDACTED], Los Angeles.

- Documents dated in 1985 and 1986 from the California Department of Public Social Services.
- A baptism document dated January 26, 1986 from Our Lady Queen of Angels in Los Angeles, indicating the applicant's daughter was baptized on January 26, 1986.
- Her daughter's immunization record reflecting vaccinations given from October 12, 1985 through November 2, 1986 in Los Angeles, California.
- Her daughter's August 4, 1985 birth certificate.
- Several Medi-cal Identification Card in her daughter's name issued in 1986, 1987 and 1988.

The applicant submitted several photocopies of money order receipts. However, said receipts have no probative value as there were not addressed to the applicant.

The applicant indicated that she had received public assistance for her daughter from August 4, 1985 to October 1986.

In a Notice of Intent to Deny issued on October 25, 2004, the director advised the applicant that the affidavits submitted were vague, did not contain sufficient information and were not accompanied by corroborative evidence. The director also advised the applicant that she had a history of receiving public assistance since 1984 and, therefore, did not have sufficient history of verifiable income. The director determined that the applicant may be likely to become a public charge. The applicant, however, failed to respond to the notice.

On appeal, the applicant submits statements from [REDACTED], and [REDACTED] and [REDACTED] of Calabasas, California, who indicated that the applicant has been employed as housekeeper and as a caretaker for their children at both residences since mid 1995.

Pursuant to the Special Rule set forth in 8 C.F.R. § 245a.18(c)(2)(d)(3), the AAO concludes that the applicant has shown a consistent employment history from [REDACTED] to establish that she will not likely become a public charge. Therefore, we do not find the applicant inadmissible under section 212(a)(4) of the Immigration and Nationality Act.

In this instance, the applicant submitted evidence, which tends to corroborate her claim of residence in the United States during the requisite period. Pursuant to *Matter of E--M--*, *supra*, affidavits in certain cases can effectively meet the preponderance of evidence standard, and the director cannot simply refuse to consider such evidence merely because it is unaccompanied by other forms of documents. The record contains no evidence to suggest that the director attempted to contact any of the former employers to verify the authenticity of the employment documents submitted. The district director has not established that the information in this evidence was inconsistent with the claims made on the application, or that it was false information. As stated in *Matter of E--M--*, *supra*, when something is to be established by a preponderance of evidence, the applicant only has to establish that the asserted claim is probably true. That decision also points out that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. The documents that have been furnished may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

The documentation provided by the applicant supports by a preponderance of the evidence that the applicant satisfies the statutory and regulatory criteria of entry into the United States before January 1, 1982, as well as continuous unlawful residence in the country during the ensuing time frame of January 1, 1982 through May 4, 1988, as required for eligibility for legalization under section 1104(c)(2)(B)(i) of the LIFE Act.

Accordingly, the applicant's appeal will be sustained. The district director shall continue the adjudication of the application for permanent resident status.

ORDER: The appeal is sustained.