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U.S. Citizenship  
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L2

FILE:



Office: LOS ANGELES,

Date:

MAR 19 2007

MSC 02 225 62722

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 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.

On appeal, the applicant asserts that she has been in the United States since 1981 and the documentation submitted in response to the Notice of Intent to Deny was sufficient to overcome any discrepancies cited by the director. The applicant argues that the director failed to set forth a specific reason for his denial.

It is noted that the director, in denying the application, did not address the evidence furnished in response to the Notice of Intent to Deny, and did not set forth the specific reasons for the denial pursuant to 8 C.F.R. § 103.3(a)(1)(i). As such, the documentation submitted throughout the application process will be considered on 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. 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:

- A letter dated March 18, 1991 from [REDACTED] of St. Francis House in Santa Ana, California, who indicated that she has known the applicant since 1988. The affiant asserted that the applicant replaced one of their workers for three months and attested to the applicant's other employment in Riverside and Van Nuys.
- A letter dated March 7, 1991 from [REDACTED] owner of Herndon Chiropractic Office in Santa Ana, California, who indicated that the applicant has been in his employ as a housekeeper since January 1982.
- An affidavit notarized April 12, 1991 from [REDACTED] who indicated that he has known the applicant since 1980 and was in his employ as a housekeeper and babysitter.
- A California identification card issued on May 6, 1986 and listed the applicant's address as [REDACTED] Riverside.
- A rediform receipt dated October 30 1982, which lists the applicant's address as [REDACTED]
- A letter in the Spanish language dated 15 December 1982 without the required English translation.
- Affidavits notarized March 11, 2000 from [REDACTED] and [REDACTED] of West Yordan, Utah, who attested to the applicant's residence in Santa Ana, California from 1981 to 1986. The affiants indicated that the applicant resided with them from 1981 at [REDACTED] Santa Ana.
- An undated letter from [REDACTED] of Santa Ana, California, who indicated that he has known the applicant since 1982 and attested to the applicant's character.
- A letter dated February 11 2002 from [REDACTED] and [REDACTED] of Templo Emanuel in Santa Ana, California, who indicated that the applicant has been an active member of their church from January 1982 to 1988.
- Two receipts dated in 1987 and an earnings statement dated February 21, 1988.
- An uncertified 1987 California short tax form 540A.
- A 1988 wage and tax statement from Star Temporary Services.
- Several envelopes with indecipherable postmarks addressed to the applicant.
- A money order receipt issued on November 16, 1987.

The director issued a Notice of Intent to Deny dated November 8, 2004, which advised the applicant that she had not submitted sufficient evidence to establish continuous residence during the requisite period. The affidavits

submitted were lacking evidentiary weight as they did not contain sufficient information and were not accompanied by corroborative documents. The applicant was also advised that the rediform receipt dated October 3, 1982 was questionable "because it was printed on forms that according to the company that printed them, it was not for sale until 1984."

In response, the applicant reaffirmed her residence with [REDACTED] from 1982 to 1986 at 4 [REDACTED] Street. It is noted that the applicant indicated on her Form I-687 application to have resided with the [REDACTED] from January 1981 to January 1986. The applicant listed her employment during the requisite period as follows: 1) from 1982 to 1986 as a housekeeper with [REDACTED] 2) from January 1986 to February 1987 as a laborer for Blue Beener, an orange packing company; and 3) subsequent to February 1987, was employed by [REDACTED] Cheroky, J.B. Electronics and Donut and Subs. The applicant submitted an additional letter from [REDACTED] who reaffirmed the applicant's membership within her church since 1982. Regarding the rediform receipt, the applicant asserted that several versions were available and that she had requested a copy of the product catalog for 1982 from the company.

Although the applicant was advised of adverse information regarding the rediform receipt prior to the decision, the *actual adverse evidence* which served in part for denial in this case, namely Citizenship and Immigration Services (CIS) contact with the company who indicated that the receipt "was not for sale until 1984," was not entered into the applicant's file. Whatever resulted from such contact whether it consisted of a sworn statement, a letter, or even a specific memorandum made at the time of a telephone call to relating in detail the salient points of the conversation, *must* be incorporated into the record of proceeding. As such, the director's finding will be withdrawn.

However, the receipt does raise questions to its credibility as the address indicated on the receipt was not claimed by the applicant on her Form I-687 application.

The applicant has submitted sufficient evidence to establish her residence in the United States since before January 1, 1982 to January 1986. The AAO, however, does not view the documents submitted as substantive enough to support a finding that the applicant continuously resided in the United States from February 1986 through May 4, 1988. Specifically:

- The applicant claimed on her Form I-687 application to have been employed by [REDACTED] from January 1986 to February 1987; [REDACTED] from February 1987 to January 1988 and at Cheroky from January 1988 to May 1988; however, she provided no evidence to support her claims.
- Although item 36 of the Form I-687 application requests the applicant to list the full names and addresses of her employers, the applicant failed to provide an address for any employer since 1986. As such, the applicant's alleged employments ([REDACTED] and [REDACTED]) are not amenable to verification by CIS.
- The letters from [REDACTED] do not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, the pastor does not explain the origin of the information to which she attests.
- The employment affidavit from [REDACTED] has little evidentiary weight or probative value as the affiant failed to provide a telephone number or address and, therefore, the affidavit is not amenable to verification by CIS.

- The letter from [REDACTED] failed to state the specific timeframe the applicant was employed during 1988. Furthermore, because the affiant did not meet the applicant until 1988, she cannot attest to the applicant's other employment prior to 1988.
- While [REDACTED] attested to have known the applicant since 1981, he failed to provide any details as to how and where they met, the nature of their interaction in subsequent years or the applicant's actual address.

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 (5<sup>th</sup> ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991). Given the credibility issues arising from the documentation, and the insufficiency of the affidavits provided by the applicant, it is determined 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). Given this, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

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