

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



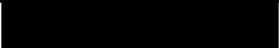
U.S. Citizenship
and Immigration
Services

L2

PUBLIC COPY



FILE:



Office: LOS ANGELES

Date: MAR 30 2007

MSC 02 099 61196

IN RE:

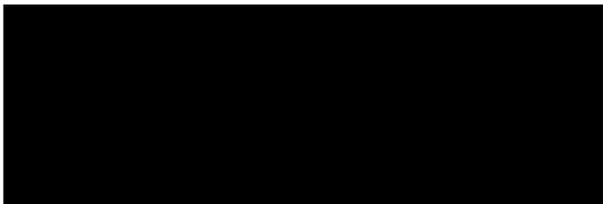
Applicant:



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, and is now before the Administrative Appeals Office 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, counsel asserts that the director failed to properly consider the documentation submitted by the applicant establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988 and resolving the inconsistencies noted by the director in the Notice of Intent to Deny (NOID).

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 through May 4, 1988. 8 C.F.R. § 245a.11(b).

An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceed one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. 8 C.F.R. § 245a.15(c)(1).

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 sufficiently 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 throughout the application process:

- A letter dated January 18, 2005 from [REDACTED] stating that the applicant lived with her at her residences from October 1981 to 1991.
- A letter dated January 18, 2005 from [REDACTED] z stating that she employed the applicant as a babysitter from February 1981 through September 1984.
- A letter dated January 9, 2005 from [REDACTED] dated January 9, 2005 stating that the applicant assisted her in cleaning houses from 1984 to 1987.
- A letter dated January 8, 2005 from [REDACTED] stating that he employed the applicant as a babysitter for five years beginning in September 1987.
- A Social Security Statement dated February 5, 2001.
- An affidavit notarized on August 22, 1990 from [REDACTED] stating that the applicant lived with her at the following addresses: [REDACTED] from October 1981 to February 1984; [REDACTED] from February 1984 to January 1985; [REDACTED] from February 1985 to October 1986; and at [REDACTED] from October 1986 to that date.
- An affidavit notarized on August 21, 1990 from [REDACTED] stating that she employed the applicant as a babysitter from February 1981 through September 1984.
- An affidavit notarized on August 20, 1990 from [REDACTED] stating that he had employed the applicant as babysitter from September 1987 to that date.
- An affidavit notarized on August 15, 1990 from [REDACTED] stating that the applicant worked with her as a housekeeper from October 1984 to July 1987.
- Various receipts dated throughout the period bearing the applicant's name and address.

- A Form 1099-MISC for 1987.
- Various envelopes postmarked throughout the period and bearing the applicant's name and address.
- A letter from Fr. [REDACTED] of the Holy Family Catholic Church stating that the applicant has been a member of the church since October 1981.

On November 23, 2004, 2004, the director issued a Notice of Intent to Deny (NOID) observing several discrepancies in the evidence of residency submitted by the applicant. Specifically:

- The applicant testified at her interview that she first entered the United States in 1968, staying for three months, then returned again to the United States in 1978. The applicant indicated that she first entered the United States in February 1981 on her Form I-687, Application for Status as a Temporary Resident, and October 1981 on her Form for Determination of Class Membership.
- The applicant's social security statement shows taxed earnings prior to 1981 but does not show any taxed earnings from 1981 to 1996.
- The applicant did not list an absence in 1984 on her Form I-687 or her Form for Determination of Class Membership, but testified that she left the United States in this year to give birth to her daughter.
- The applicant testified that she has always entered the United States with inspection, but could not remember the exact dates of her various entries.
- The applicant testified at an interview on September 26, 1990 that she did not file originally in 1987 because "it just passed me by and when I realized it, it was too late," which contradicted statements in her Form for Determination of Class Membership that she sought assistance with filing but was told that she did not qualify.

In response to the NOID, the applicant submitted a letter dated December 22, 2004 in which she reiterated that she entered the United States prior to January 1, 1982 but was absent in 1984 for her daughter's birth and 1987 for the death of her brother. The applicant asserted that she had presented sufficient documentation of residency and resubmitted copies of documents previously submitted.

In a decision to deny the application dated December 28, 2004, the director indicated that the information submitted by the applicant "failed to overcome all the grounds for denial as stated in the NOID."

On appeal, counsel asserts that the director has not substantiated the finding of negative credibility or

given proper consideration to the issue of notary fraud raised by the applicant. Counsel submits a declaration from the applicant in which the applicant states that her earnings from 1981 to 1988 do not appear on her social security earning statement because she was paid in cash during these years. The applicant also states that her Form I-687 and Form for Determination of Class Membership contain incorrect information because they were completed by a notary who did not allow the applicant to review the documents before submitting them. The applicant reiterates that she left the United States in May 1984 to give birth to her daughter and returned to the United States within 40 days. Finally, the applicant states that the officer who interviewed her in 1990 was "intimidating" and "dictated a statement to me and told me to write it." The applicant asserts that she only told the officer that "the time had passed me by to collect papers from Mexico that would serve as evidence," though she had been "discouraged by many offices to apply due to my exit in 1987 to Mexico."

Upon review of all the evidence in the record, the AAO determines that the submitted evidence is not sufficiently relevant, probative, and credible to meet the applicant's burden of proof.

The applicant claims for the first time on appeal that a notary included incorrect information in her forms, but fails to provide the identity of the notary or other details by which her assertion can be verified. Neither the Form I-687 nor the Form for Determination of Class Membership includes a preparer's name. The director did not err in finding the applicant's explanation for the inconsistencies in these forms inadequate.

The record shows that prior to filing Form I-485, Application to Register Permanent Resident or Adjust Status, in 2001, the applicant gave no indication either that she had a daughter born in 1984 or that she was absent from the United States at that time. In their 1990 affidavits, neither the applicant's employer in 1984, [REDACTED], nor the individual with whom the applicant then resided, [REDACTED], mentioned that the applicant departed from the United States in that year or listed the actual dates of this absence. Even on appeal, the applicant indicates only that she was absent from the United States in 1984 for 40 days beginning in May of that year, but she fails to provide the actual dates of her absence or evidence from which these dates may be inferred.

While the AAO concurs with counsel that the applicant has submitted significant documentary evidence to prove residency during the qualifying period, the applicant's initial concealment of her absence in 1984, subsequent failure to provide sufficient evidence showing the actual duration of this absence, and other inconsistencies concerning the applicant's initial date of entry into the United States, all raise doubts as to the *continuity* of the applicant's residency during the entire qualifying period.

Doubt cast on any aspect of an applicant's proof 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. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

As the applicant herself has submitted conflicting statements as to her initial date of entry and absence from the United States in 1984, it is reasonable to expect her to explain why she has submitted the contradictory information and adequately resolve the contradictions through credible evidence. As stated above, the explanations offered by the applicant are inadequate and not supported by other evidence in the record. These discrepancies raise questions about the authenticity of the remaining documents the applicant has presented in attempt to continuous residence in the United States prior to January 1, 1982 through May 4, 1988.

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).

Given the contradictions in the evidence, 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 he entered the United States before January 1, 1982, and resided in this country in an unlawful status continuously since that time 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.