



U.S. Citizenship
and Immigration
Services

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FILE:

MSC 02 034 60072

Office: CHICAGO

MAY 10 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. Wieman, 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, 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, counsel contends that that applicant has submitted sufficient evidence to meet her burden of proof under the preponderance of evidence standard.

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. To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony. 8 C.F.R. § 245a.12(f). 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).

While there is no specific regulation which governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements which affidavits are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information which an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to. See 8 C.F.R. § 245a.2(d)(3)(v).

Here, the submitted evidence is not sufficiently relevant, probative, and credible to meet the applicant's burden of proof.

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 May 16, 2002 from ██████████ President of the ██████████ in Chicago, Illinois, stating that he has known the applicant since March 1981 and knows that the applicant has resided in the United States since that time. Mr. ██████████ states that the applicant worked as a volunteer during Ramadan.
- An affidavit notarized on May 15, 2002 from Dr. ██████████ of Chicago, Illinois attesting that he provided the applicant with treatment on her shoulder "one or two times" yearly between January 1982 and 1988.
- An affidavit notarized on May 15, 2002 from Dr. ██████████ of Chicago, Illinois attesting that he knows the applicant has been a full-time resident of the United States since January 1982. Dr. ██████████ states that the applicant has lived in different states and cities, but has consulted with him on medical matters and also socialized with him at community meetings.
- An affidavit notarized on May 14, 2002 from ██████████ of Chicago, Illinois stating that he knows the applicant has resided in Chicago and other cities in the United States since March 1981.
- An affidavit notarized on May 14, 2002 from ██████████ of Lawrenceville, Georgia stating that he has visited the applicant in her home and knows the applicant has resided in several cities in the United States since 1981.

- An affidavit dated May 11, 2002 from [REDACTED] of Passaic, New Jersey stating that the applicant has been in the United States and visited the affiant's home many times since first coming to the country in March 1981.
- An affidavit dated May 7, 2002 from the applicant's cousin, [REDACTED] of Troy, Michigan, stating that he knows that applicant has resided in the United States since her arrival in the "late 1980's."
- An affidavit dated May 6, 2002 from the applicant's cousin [REDACTED] of Shelby Township in Michigan, stating that the applicant has resided in the United States in various locations since March 1981 and they have met at "several social/family gatherings throughout the years."

On August 16, 2004, the director issued a Notice of Intent to Deny (NOID) acknowledging the affidavits submitted by the applicant but finding that these "affidavits from friends and relatives . . . did not meet the criteria established to permit the Service to substantiate [the applicant's] claim to being physically present in the United States during the prescribed periods." The director cited the regulation at 8 C.F.R. § 103.2(b) as containing the evidentiary criteria not met by the applicant.

In the decision to deny the application dated February 22, 2005, the director restated the grounds for denial found in the NOID and denied the application.

On appeal, counsel contends that that applicant has submitted sufficient evidence to meet her burden of proof under the preponderance of evidence standard.

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 director incorrectly cited the regulation at 8 C.F.R. § 103.2(b) as containing the evidentiary standard most relevant to LIFE Act cases. As stated above, although the LIFE Act 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). However, the affidavits submitted by the applicant lack essential detail and are of insufficient probative value in demonstrating the applicant's *continuous* residency during the qualifying period.

All of the affidavits submitted by the applicant fall short of meeting the evidentiary guidelines set forth in 8 C.F.R. § 245a.2(d)(3). None of the affiants list the applicant's actual addresses during the qualifying period or provide a credible basis to support their assertion of personal knowledge that the applicant continuously resided in the United States during that period. On her Form I-687, Application for Status as a Temporary Resident, filed in 1992, the applicant lists several residences for the period of January 1, 1982 to May 4, 1988. However, the applicant has not submitted affidavits from any individuals—such as former landlords and neighbors—that attest to the applicant residing at these addresses. None of the affiants live in the same cities, or claim to have lived in the same cities, as listed by the applicant as residences on her Form I-687. Most of the affiants claim to have seen the applicant

in the United States during the qualifying period. However, to the extent the affiants even divulge the nature of their contact with the applicant, it appears that such contact was irregular and infrequent.

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). When viewed in its totality, the evidence in the record fails to demonstrate that it is probable the applicant resided continuously in the United States from before January 1, 1982 through May 4, 1988.

Given the significant insufficiencies in the evidence submitted by the applicant, the AAO determines that she 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 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.