



U.S. Citizenship
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FILE:



Office: CHICAGO

Date:

MAY 10 2007

MSC 02 246 65916

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. 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, 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, the applicant contends that she was not given enough time to submit evidence of residency. The applicant asserts that producing evidence of events that occurred twenty years ago is not an easy task and requests that she be given "one more chance" to gather and submit evidence.

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).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must be on employer letterhead stationery, if the employer has such stationery, and must include the following:

- (A) Alien's address at the time of employment;
- (B) Exact period of employment;
- (C) Periods of layoff;
- (D) Duties with the company;
- (E) Whether or not the information was taken from official company records; and
- (F) Where records are located and whether the Service may have access to the records.

The regulation further allows that if official company records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and explaining why such records are unavailable may be submitted in lieu of meeting the requirements at (E) and (F) above.

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 March 24, 2003 from [REDACTED] Pastor at the [REDACTED] in Chicago, Illinois, stating that the applicant has attended weekly mass and been a member of the Parish since 1981.
- A letter dated April 7, 2003 from [REDACTED] Owner of [REDACTED] in Chicago, Illinois, stating that the applicant performed cleaning duties at the company's offices "twice a week between the years of 1981 and 1985."
- A letter dated April 6, 2003 from [REDACTED] of Chicago, Illinois stating that the applicant helped clean his house during 1983 and 1985.

- An affidavit notarized on April 3, 2003 from [REDACTED] stating that the applicant resided with and assisted the affiant's sick mother, [REDACTED] at [REDACTED] Houston and [REDACTED] in Chicago, Illinois. Ms. [REDACTED] states that the applicant returned to live with her parents in September 1985.
- An affidavit notarized on January 6, 1991 from [REDACTED] stating that he rented the premises at [REDACTED] in Chicago, Illinois to the applicant from either October 1981 or October 1985 to the date he signed the affidavit.¹
- An affidavit notarized on January 4, 1991 from [REDACTED] stating that he has known the applicant for the last five years.
- An affidavit notarized on January 1, 1991 from [REDACTED] stating that she has known the applicant for the last ten years.
- An affidavit notarized on December 31, 1990 from [REDACTED] of the [REDACTED] stating that the applicant has been a customer of the store for five years.
- A letter dated December 28, 1990 from [REDACTED] Personnel Manager at Associated [REDACTED] in Chicago, Illinois, stating that the applicant was employed as an assembler from September 9, 1986 to December 12, 1986, from January 30, 1987 to February 24, 1989, and from March 6, 1989 to December 7, 1989.

On April 23, 2003, the director issued a Notice of Intent to Deny (NOID) finding that the evidence of residency submitted by the applicant did "not meet the criteria established to permit the Service to substantiate your 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. The director stated "there has been no evidence of the existence of primary or secondary evidence as outlined," and indicated that although the affidavits and other documentation submitted by the applicant had been considered, the applicant had not established residency by a preponderance of the evidence.

In the decision to deny the application dated February 23, 2005, the director restated the grounds for denial found in the NOID and denied the application.

On appeal, the applicant contends that she was not given enough time to submit evidence of residency. The applicant asserts that producing evidence of events that occurred twenty years ago is not an easy task and requests that she be given "one more chance" to gather and submit evidence.

¹ The date is illegible.

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). Likewise, the AAO notes that the director's decision lacks specificity as to the deficiencies in the applicant's evidence constituting the basis for denial of the application. However, the evidence of residency submitted by the applicant contains significant and glaring inconsistencies that support the director's conclusion that the applicant has not established eligibility by a preponderance of the evidence. Specifically:

- On her Form I-687, Application for Status as a Temporary Resident, the applicant lists her occupation from October 1981 to September 1986 as a "Sitter" for [REDACTED] of [REDACTED] in Chicago, Illinois. However, the affidavits from [REDACTED] and [REDACTED] show different employment for this period, employment that is not listed on the Form I-687. The applicant has not submitted an affidavit from Ms. [REDACTED] or any other evidence substantiating this employment.
- On her Form I-687, the applicant lists her only address in the United States as [REDACTED] in Chicago, Illinois. This contradicts the testimony of [REDACTED] who **implies** in her affidavit that the applicant lived with her mother at two different addresses in Chicago, Illinois prior to September 1985. It is unclear on the face of the affidavit from [REDACTED] of Mr. [REDACTED] intended to list October 1981 or October 1985 as date the applicant begin renting the premises at [REDACTED] as both the number 1 and the number 5 appear following the number 8 in the listed date. **However, it is noted that the applicant was only ten-years-old in October 1981, and therefore not of legal age to have rented from Mr. [REDACTED]**
- The affidavits from [REDACTED] and Pastor [REDACTED] do not state a basis for the affiants' personal knowledge of the information attested to in the affidavits.

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).

The applicant has submitted conflicting evidence concerning her employment and residences in the United States. It is reasonable to expect her to explain why she has submitted the contradictory information and adequately resolve the contradictions through credible evidence. It is reasonable to expect the applicant to submit explanations from affiants providing testimony that contradicts other evidence submitted by the applicant. The applicant has failed to present sufficient credible evidence of residency that adequately addresses the discrepancies noted herein and meets her burden of proof. 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). When viewed in its totality, the evidence in the record demonstrates that it is probable that the applicant resided in the United States from before January 1, 1982 through May 4, 1988.

Given the significant unresolved discrepancies 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.