

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L2

[REDACTED]

FILE:

MSC 03 053 60125

Office: DALLAS

Date:

OCT 25 2007

IN RE:

Applicant:

[REDACTED]

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:

[REDACTED]

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, Dallas, Texas, 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 asserts the applicant submitted sufficient evidence establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel provided evidence of each affiant's identity and of their residence during the period in question.

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).

According to the director, in her Notice of Intent to Deny dated May 26, 2004, the applicant has submitted sufficient evidence to establish she resided unlawfully in the United States from 1986 through May 4, 1988. At issue in this proceedings is the documentation submitted by the applicant in an effort to establish continuous residence prior to 1986. The director informed the applicant of her failure to comply with the Form I-72 dated June 13, 2003, which requested her to submit evidence of continuous residence

from January 1, 1982 through December 31, 1985. The applicant was advised that she had failed to provide credible and verifiable evidence of her presence from January 1, 1982 through 1985. The director, in denying the application, determined that the applicant had not submitted sufficient evidence to establish continuous unlawful residence from January 1, 1982 through 1985.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through 1985 the applicant provided the following evidence:

- Notarized affidavits from [REDACTED] of Forth Worth, Texas, who indicated the applicant residing in her homes during the requisite period, specifically 2446 Miller, Chicago, Illinois from September 1981 to December 1985. The affiant indicated during the time period she was working, the applicant would help with the housework and took care of her child and received a small salary for her services. The affiant attested to the applicant's absence from September to October 1987.
- A notarized affidavit from Rodolfo Ortega of Forth Worth, Texas, who indicated he met the applicant through his fiancé at the time in September 1981. The affiant asserted the applicant was residing at the mother of his fiancé's home at [REDACTED]. The affiant attested to the applicant's residence at [REDACTED] through June 1984. The affiant indicated he departed to Forth Worth, Texas in June 1984.
- A notarized affidavit from [REDACTED] of Forth Worth, Texas, who attested to the applicant's residence at her home at [REDACTED] December 1985. The affiant indicated the applicant took care of her child as well as her daughter's [REDACTED].
- A notarized affidavit dated November 11, 2002, from [REDACTED] of Charlotte, North Carolina, who indicated she has known the applicant for 21 years. The affiant indicated the applicant was her babysitter when she was a child residing in Chicago, Illinois and Texas. The affiant asserted that she has remained in contact with the applicant since that time.
- A notarized affidavit from [REDACTED] of Forth Worth, Texas, who indicated she has known the applicant since 1981. The affiant asserted the applicant babysat her sister's child and resided with her mother in Chicago, Illinois through 1985.
- A notarized affidavit from [REDACTED] of Forth Worth Texas, who indicated he has known the applicant since September 1981 and that the applicant stayed in his home for two days in Dallas, Texas before traveling to Chicago, Illinois. In 1984, the affiant indicated he traveled to Chicago and the applicant was residing at his mother-in-law's home in Chicago, Illinois. The affiant attested to the applicant's move to Texas in 1985.

The applicant, in response, to the Notice of Intent to Deny submitted copies of documents that were previously provided by the Benitez family along with evidence of their residence in the United States.

On appeal, counsel submits additional affidavits from the Benitez family reaffirming the applicant's residence in their homes from September 1981 to December 1985 at [REDACTED] January 1986 to November 1987 at [REDACTED] and December 1987 to June 1989 at [REDACTED] Texas. Each affiant reasserted the veracity of their previous statements.

The AAO does not view the documents from the affiants discussed above as substantive enough to support a finding that the applicant continuously resided in the United States during the requisite period as she has presented inconsistent documents, which undermines her credibility. Specifically, the

applicant presented several envelopes postmarked in 1986 and 1987 to her at three addresses in Texas. The applicant, however, did not claim residence at any of these addresses on her Form I-687 application during the requisite period. The applicant neither provides an explanation for this inconsistency nor affidavits from the affiants who were residing at these locations.

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).

Given the credibility issues arising from the documentation 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.