

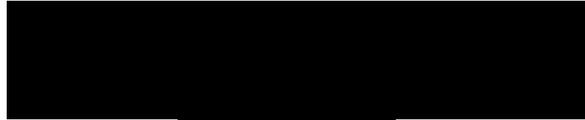
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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 02 260 60059

Office: CHICAGO

Date:

SEP 06 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. 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, Illinois, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant had not demonstrated that she was physically present in the United States since before January 1, 1982 through May 4, 1988.

On appeal, the applicant's accredited representative asserts that the director "erred in applying the wrong criteria to the application; applying an incorrect standard of law; failing to consider all of the evidence; and imposing unreasonable corroboration requirements on the Applicant." The representative submits a brief in support of the application.

The director erred in his determination that the applicant had not established physical presence in the United States from prior to January 1, 1982 through May 4, 1988. 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. Section 1104(c)(2)(B) of the LIFE Act; 8 C.F.R. § 245a.11(b). An applicant must only establish that he or she was continuously physically present in the United States from November 6, 1986 through May 4, 1988. Section 1104(c)(2)(C) of the LIFE Act; 8 C.F.R. § 245a.11(c). Nonetheless, the evidence does not establish that the applicant has submitted sufficient evidence to establish continuous residency in the United States during the requisite period.

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 or petitioner 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 or petition.

Although Citizenship and Immigration Services (CIS) 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

On a form to determine class membership, which she signed under penalty of perjury, the applicant stated that she first entered the United States in August 1981. On her Form I-687, Application for Status as a Temporary Resident, the applicant stated that she worked as a babysitter and housekeeper for [REDACTED] at [REDACTED] Illinois from August 1981 until the date that she signed the Form I-687 application. The applicant also stated that she lived at [REDACTED] go from August 1981 to November 1989.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant submitted the following evidence:

1. A March 11, 1991 sworn statement from [REDACTED] in which she stated that she had known the applicant since her entry into the United States in August 1981. [REDACTED] who stated that she lived at [REDACTED] stated that she was a good friend of the applicant and that they saw each other on a regular basis.
2. A March 18, 1991 affidavit from [REDACTED] in which he stated that he met the applicant at a birthday party, and that to his knowledge, the applicant had lived in Chicago from November 24, 1981 to the date of the affidavit.
3. An undated letter signed by [REDACTED], in which he stated that the applicant had been a patient of his dental practice since November 1981.
4. A March 18, 1991 sworn statement from [REDACTED], in which she stated that the applicant had worked for her as a housekeeper and babysitter since August 1981. [REDACTED] stated that the applicant's compensation consisted of \$120 per week plus room and board. [REDACTED] stated that the applicant lived with her from Monday to Friday and "stays at her house at" [REDACTED] Chicago, which was the address at which the applicant stated that she began living in 1989. In a May 3, 2002 sworn statement, [REDACTED] stated that she had lived at [REDACTED] 1981. This information appears inconsistent with that provided by the applicant on her Form I-687 application, where she stated that she worked for [REDACTED] while living at [REDACTED]. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).
5. A May 18, 2002 affidavit from [REDACTED], who listed her address as [REDACTED] in Chicago. The affiant stated that the applicant was the daughter of a friend, and that upon the applicant's arrival in the United States in August 1981, the applicant came to live with her and lived with her continuously from August 1981 to November 1989. This information appears inconsistent with that of [REDACTED], who stated that she lived at [REDACTED] during this time and employed the applicant as a baby sitter. Neither the applicant, [REDACTED] stated that all three shared the residence during the relevant time frame. We note that in her March 11, 1991 statement, which she signed as [REDACTED] did not state that the applicant lived with her.
6. A May 17, 2002 letter from the office of [REDACTED] in Chicago and signed by [REDACTED]. The letter indicates that the applicant had been a patient "at this clinic since January 1982." The letter

does not indicate the capacity of [REDACTED] practice or his or her authority to sign letters on behalf of the doctor.

7. A May 20, 2002 sworn letter from [REDACTED] in which she stated that she had known the applicant since 1982. [REDACTED] did not indicate when or under what circumstances she met the applicant.
8. A May 20, 2002 affidavit from [REDACTED] in which she stated that she met the applicant at a reunion in February 1982, and that they have been friends since that time.
9. A May 18, 2002 affidavit from [REDACTED] in which she stated that she met the applicant at a party in April 1982, and that she has resided continuously in the United States since that time.
10. A May 18, 2002 affidavit from [REDACTED] in which she stated that she met the applicant at a youth group at the Maternity BVM Church in April or May 1984.
11. A May 20, 2002 affidavit from [REDACTED] in which he certified that he met the applicant in February 1985 while attending classes at Truman College.
12. Envelopes addressed to [REDACTED] and postmarked January 1988 and February 28, 1988.

An envelope addressed to the applicant in the United States contains a stamp dated 1986 but does not show a postmark; however, the letter inside is dated 1989. As this is subsequent to the qualifying period, it is not evidence of the applicant's residency during the requisite period. Another envelope contains a stamp dated 1987, however, the postmark is illegible.

The record also contains a May 14, 2002 letter from the Maternity BVM Church in Chicago signed by [REDACTED]. Revered Pelton stated that the applicant was a member of the parish, but did not state when she began her membership.

In response to the director's Notice of Intent to Deny (NOID) dated September 14, 2004, the applicant submitted the following documentation:

1. A copy of an installment agreement, signed by [REDACTED] and dated October 28, 1981. The vendor's name on the document is unclear and does not list an address for the purchaser.
2. A copy of a money order showing [REDACTED] as the remitter. According to counsel's letter accompanying the applicant's response to the NOID, the date of the money order is November 27, 1983. However, the year in the date of the document does not clearly indicate that it was issued in 1983.
3. A copy of a money order showing the applicant as the remitter. The date on the money order is September 17, 1984. The date on the copy of another money is illegible.

The applicant also submitted a copy of an envelope; however, the postmark date of the envelope is illegible.

In his Notice of Decision, the director stated that the applicant failed to list any aliases, and that documentation submitted with other names had not been proven to belong to the applicant. We note, however, that on a *CSS v. Reno* processing sheet dated May 17, 1994, the applicant stated that she had used the name [REDACTED]. Nonetheless, the applicant submitted no documentation as outlined in 8 C.F.R. § 245a.2(d)(2), to confirm that she was known under any of her aliases.

The applicant has submitted conflicting evidence of her residence in the United States during the qualifying period. Additionally, the applicant failed to submit evidence to establish the use of the various aliases that she stated she used during the qualifying period. Accordingly, it is concluded that the applicant has failed to establish by a preponderance of the evidence that she resided continuously in an unlawful status from prior to January 1, 1982 to May 4, 1988.

The record reflects that the applicant filed a new Form I-687, Application for Status as a Temporary Resident, on January 10, 2006 (MSC 06 102 13347). The record reflects that the director denied this application on May 25, 2006. However, it is not at issue in this decision.

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