



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: DALLAS

Date:

APR 01 2008

MSC 01 340 60105

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 National Benefits Center. 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, Dallas, Texas. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate that she resided in the United States in a continuous unlawful status from before January 1, 1982, through May 4, 1988.

On appeal, counsel for the applicant submits a brief and photocopies of documentation preciously submitted.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. *See* section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

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 its amenability to verification. *See* 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.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i), letters from employers attesting to an applicant’s employment must provide: the applicant’s address at the time of employment; identify

the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and, identify the location of such company records and state whether such records are accessible or, in the alternative, state the reason why such records are unavailable.

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

Nevertheless, an affidavit not meeting all the foregoing requirements "may" still merit consideration as "any other relevant document" pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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:

1. A letter, dated February 16, 1990, from [REDACTED] identified as the owner of [REDACTED] Building Services, Dallas, Texas, stating that the applicant worked for him in janitorial services from July 10, 1986, to May 5, 1988, at the rate of \$3.75 paid in cash.
2. A form-letter affidavit, dated June 21, 1990, from [REDACTED] identified as an Associate Minister residing in Dallas, Texas, stating that he has personal knowledge that the applicant's residence in the United States from 1985 to 1990 because she was a regular member of the Highland Oaks Church of Christ.
3. A notarized letter, dated June 27, 1990, from [REDACTED], identified as the owner of [REDACTED]'s Cleaning Service, Tyler, Texas, stating that the applicant worked for him from October 4, 1980, until December 16, 1985, at the rate of \$3.35 per hour paid in cash.
4. Two photocopies of "Auto Repair Orders" from M&A Auto Repair, Garland, Texas, dated July 1982 and October 1983.

The applicant filed her application for permanent resident status under the LIFE Act (Form I-485) on September 5, 2001. In the Notice of Intent to Deny (NOID), dated July 11, 2005, the director determined that the applicant had failed to establish her residence in the United States in a continuous unlawful status from before January 1, 1982, through May 4, 1988. The director granted the applicant thirty (30) days to submit additional evidence. In the Notice of Decision (NOD), dated September 17, 2005, the director denied the application on the ground that the applicant had failed to overcome the reasons for denial of the application detailed in the NOID.

On appeal, counsel asserts that documentation submitted in support of the application was not considered in full before arriving at a decision.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she continuously resided in the United States in an unlawful status from before 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 (5<sup>th</sup> ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

The applicant has not provided any contemporaneous documents from the years 1982-1988 that demonstrate her residence in the United States during that time. The only documentation in the record of the applicant’s presence in the United States prior to January 1, 1982, is No. 3, above. As previously indicated, evidence must be evaluated not only by its quantity, but also by its quality. The absence of detailed documentation to corroborate the applicant’s claim of continuous residence and continuous physical presence for the requisite time periods seriously detracts from the credibility of her claim. In accordance with 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility, and its amenability to verification.

Given the insufficiency 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 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).

It is concluded that the applicant has failed to establish that she resided in continuous unlawful status in the United States from before January 1, 1982, through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act. Given this, she 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.