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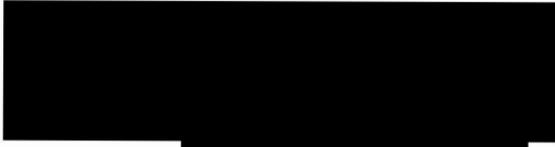
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:

MSC 02 245 60834

Office: DALLAS

Date:

APR 02 2008

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits [or Records] Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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 on the ground that the applicant failed to establish that she had entered the United States before January 1, 1982, and had resided continuously in unlawful status in the United States from then through May 4, 1988.

On appeal, counsel for the applicant submits a brief, copies of documentation previously provided, and an additional (new) document.

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.

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 that governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements that affidavits are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information that 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)(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. 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.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(v), 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.

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).

The applicant filed her application for permanent resident status under the LIFE Act (on Form I-485) on June 2, 2002. In an attempt to establish her continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following documentation in support of her application:

- A letter, dated June 10, 2003, from her (claimed) United States citizen brother, [REDACTED], living in Plano, Texas, stating that his sister moved from Karachi, Pakistan to Miami, Florida in August 1981. Mr. [REDACTED] states that he was living in Karachi at the time and spoke with his sister by phone every few months. She told him that she was living with [REDACTED] and babysitting Ms. [REDACTED]'s daughter. Mr. [REDACTED] further states that he moved to Miami in 1985 and saw his sister every day. In 1987, he moved to Chicago and remained in close contact with her by phone. While not required, the letter is not accompanied by proof of

Mr. [REDACTED] identification or any evidence that he resided Miami from 1985 to 1987.

- An undated letter from [REDACTED] Miami, Florida, stating that the applicant lived with her from September 1981 to November 1986. A second letter, dated August 15, 2003, from Ms. [REDACTED] states that she first met the applicant while visiting Karachi in 1975, and next saw her in Miami in August 1981. She states that the applicant lived with her from September 1981 through 1986, when the applicant moved to another location in Miami and began working for a Montessori school. Even though the applicant no longer lived with her, Ms. [REDACTED] states that she still saw the applicant regularly at church. She further states that the applicant moved to Chicago briefly in 1990 for about six months, returned to Miami in early 1991, and in May 1992 moved to Dallas. While not required, this letter also is not accompanied by proof of Ms. [REDACTED] identification or any evidence that she resided in Miami from 1981 to 1986.
- An undated letter from [REDACTED] Euless, Texas, stating that the applicant is personally known to him since September 1981. Additional letters, dated August 15, 2003 and November 17, 2003, from Mr. [REDACTED] state that he saw the applicant while visiting Miami in 1984. Mr. [REDACTED] claims to have personal knowledge that the applicant has been living in the United States since 1984 because he has seen her yearly since then and has never heard of her moving out of the country to anywhere else. Again, the letters are not accompanied by proof of Mr. [REDACTED] identification. He also fails to note the address(es) where the applicant lived during the period in which he had contact with her.
- A Publix Super Markets, Inc., check cashing courtesy card issued to the applicant on November 19, 1987.
- A photocopy of an Internal Revenue Service (IRS) Form 1040, U.S. Individual Income Tax Return) for 1988 and a Social Security statement showing the applicant's wages of \$3,941 in 1986 and \$5,038 in 1988.

On September 18, 2003, the applicant was interviewed in connection with her application. At that time, she was given a list of examples of evidence and requested to submit such evidence in support of her application. In response, the applicant provided a letter, dated November 20, 2003, from [REDACTED] on The Von Wedel Montessori School (in North Miami, Florida) stationery, stating that the applicant was a volunteer at the school from approximately 1982 through 1987.

In a Notice of Intent to Deny (NOID), dated July 16, 2005, the district director determined that the applicant failed to provide "creditable [sic] and verifiable" evidence of her presence in the United States during the required time period. The district director specifically noted that although the applicant claimed to have entered the United States as a non-immigrant visitor in August 1981, no evidence to support that claim had been provided. The director granted the applicant 30 days to submit additional evidence.

In response, the applicant provided a letter, dated August 10, 2005, from F [REDACTED] Senior Pastor of the Cathedral of Hope Church, stating that the applicant came to him “during the month of October or November 1981 to teach at [his] grandfather’s church and Daycare Drake Memorial Baptist Church. There was no vacancy so [he] took her to The Von Wedrl [sic] Montessori School, where she started in the beginning of 1982.”

On December 27, 2005 the district director denied the application on the ground that the applicant had failed to establish she had entered the United States before January 1, 1982. The district director noted that a November 2, 2005, attempt to verify the information provided by [REDACTED] was unsuccessful because the phone number given by him had been disconnected.

On January 30, 2006, the applicant, through counsel, filed a timely appeal. On appeal, counsel asserts that the applicant submitted substantial and verifiable evidence of her physical presence and residence in the United States from January 1, 1982, through May 4, 1988, and has satisfied her burden of proof by a preponderance of the evidence. Subsequent to the filing of the appeal, counsel submitted a second letter, dated February 28, 2006, from Pastor [REDACTED] reaffirming the information provided in his previous letter of August 10, 2005. Pastor [REDACTED] noted that his church had moved to a new location in October 2005.

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 AAO concludes that she has not.

The applicant has not provided any contemporaneous documentation for the years 1981-1985. The only documentation contained in the record of the applicant’s presence in the United States prior to January 1, 1982, is a (volunteer) employment letter that does not follow the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i) and third-party statements from her brother, [REDACTED] Ms. [REDACTED] and Mr. [REDACTED]. The statements are not supported by any documentation of the affiants’ identities and presence in the United States in the early 1980s, and, for the most part, provide little detailed information as to the exact nature and extent of their interactions with the applicant during the required time period. The absence of detailed documentation to corroborate the applicant’s claim of continuous residence and continuous physical presence for the requisite time period 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 applicant’s reliance upon documents with minimal probative value, she has failed to establish her continuous residence in an unlawful status in the United States from before January 1, 1982 through May 4, 1988.

Thus, the applicant has failed to establish her entry into the United States prior to January 1, 1982, and her continuous unlawful residence in the United States for the time period specified in section 1104(c)(2)(B)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A). Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

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