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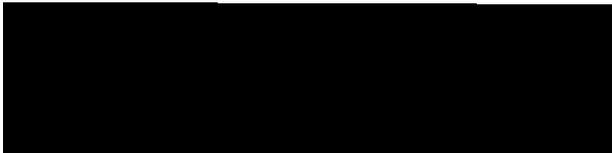
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

MSC 02 243 69836

Office: LOS ANGELES

Date:

APR 16 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. The file has been returned to the 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, Los Angeles, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to establish that she entered the United States before January 1, 1982, and that she resided continuously in the United States in an unlawful status since that date through May 4, 1988.

On appeal, applicant asserts that the director failed to consider the submitted evidence. The applicant asserts that she submitted proof to establish her continuous residence from 1982 to 1988. Applicant states that she will submit a brief to the AAO within 30 days. The appeal was filed on January 27, 2006. The record reflects that a brief was not received. Therefore, the record will be considered complete.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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 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).

In the Notice of Intent to Deny (NOID), dated on September 22, 2005, the director determined that two affidavits were not inconsistent with the applicant's own statements and submitted only to gain an immigration benefit. The director stated that when asked if she ever attended school, the applicant stated "no." However, one affidavit contradicted the applicant's statement. The director granted the applicant thirty (30) days to submit additional evidence.

In rebuttal to the NOID, counsel attempted to reconcile the discrepancy noted by the director. Counsel contended that the director failed to consider the submitted evidence, specifically postal certified receipts dated from 1981 through 1987 and the baptismal certificate of the applicant's daughter dated in 1983. Counsel also asserted that the applicant answered the director's question regarding school in the context of elementary, junior high or high school. It is noted that without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In the Notice of Decision, dated on November 10, 2005, the director determined that the information submitted failed to overcome the grounds for denial as stated in the NOID. The director denied the instant applicant based on the reasons stated in the NOID.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she entered the United States before January 1, 1982, and continuously resided in an unlawful status in the United States since that date through May 4, 1988. Here, the applicant has failed to meet this burden.

In a February 10, 2005, interview, the applicant stated that she first entered the United States in 1980. In support of the applicant's claim, the record includes photocopies of three envelopes sent by the applicant from El Monte, California, postmarked on November 13, 1981, June 12, 1984, and November 28, 1985. The record also includes photocopies of several receipts for registered mail completed by the applicant and postmarked on May 19, 1981, March 18, 1982, November 24, 1982, July 9, 1986, and May 13, 1987. The record also contains a photocopy of a certificate of baptism for the applicant's daughter, [REDACTED], dated on October 8, 1983.

The record contains an undated declaration by [REDACTED], of Rose Eye Medical Group. Dr. [REDACTED] stated that the applicant, who resided at [REDACTED] El Monte, CA 91732, was an established patient from July 1981 to February 1996. [REDACTED] provided her business address.

The declaration provides limited probative value as it failed to include medical records showing treatment or dates of appointments.

The record contains a notarized declaration by [REDACTED] dated October 10, 2005. [REDACTED] stated that she has known the applicant since 1981. [REDACTED] stated that the applicant is her hairdresser and good friend. [REDACTED] provided her address of residence, telephone number and a photocopy of her California driver's license. In a separate affidavit, dated February 28, 2005, [REDACTED] stated that she has known the applicant since 1981. The declaration provides limited probative value as it failed to indicate the applicant's place of residence during the requisite period. The declaration failed to indicate how [REDACTED] dated her acquaintance with the applicant or how frequently she saw the applicant.

The record contains an affidavit by [REDACTED], dated October 7, 2005. [REDACTED] stated that he has known the applicant since 1984 when they attended adult school at Monrovia High School in the City of Monrovia, California. The affiant provided his address of residence, telephone number, and photocopies of his U.S. passport and California driver's license. The record contains a second affidavit by [REDACTED], dated March 15, 2005. In the second affidavit, [REDACTED] stated that he first met the applicant in 1984 at an adult school. As noted by the director, this affidavit is inconsistent with the applicant's own testimony. There is no evidence in the record to reconcile this discrepancy, and it detracts from the credibility of the applicant.

The record contains a notarized declaration by [REDACTED] dated October 30, 2004. Ms. [REDACTED] stated that she has known the applicant since 1985. [REDACTED] stated that she became acquainted with the applicant in a beauty salon and they became friends. She provided her address of residence. Although not required, the declaration failed to include any supporting documentation of the affiant's presence in the United States during the requisite period. The declarant failed to indicate the applicant's place of residence during the requisite period. The declaration provides limited probative value.

The record also contains a sworn affidavit by [REDACTED] dated October 8, 2005. Ms. [REDACTED] stated that she has personally known and been acquainted with the applicant in the United States since 1981 to the present. [REDACTED] stated that she met the applicant when the applicant resided at [REDACTED], El Monte, California 91732. [REDACTED] stated that her father was the applicant's neighbor. The record also contains a November 1st sworn affidavit by Ms. [REDACTED]. In this affidavit, she stated that she has known the applicant since 1982. The record contains a third affidavit by [REDACTED], dated February 28, 2005. In this affidavit, she stated that she has known the applicant since 1980. In each of the three affidavits, [REDACTED] stated different dates of when she first met the applicant. These discrepancies seriously detract from the credibility of the affiant.

The applicant has submitted various types of evidence in support of her application. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The totality of the evidence demonstrates that the applicant has failed to establish sufficient

contemporaneous evidence of entry into the United States before January 1, 1982, and continuous unlawful residence in the United States during the duration of the requisite period. While the photocopies of postmarked envelopes, postal receipts, and birth certificate tend to indicate that the applicant was present in the United States during the requisite period, the discrepancies in the record bring into question the credibility of the applicant. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon documents with discrepancies and limited probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based on the above, the applicant has failed to established entry into the United States prior to January 1, 1982, and continuous unlawful residence 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.