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U.S. Citizenship  
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FILE: [REDACTED]  
MSC 02 245 62586

Office: LOS ANGELES

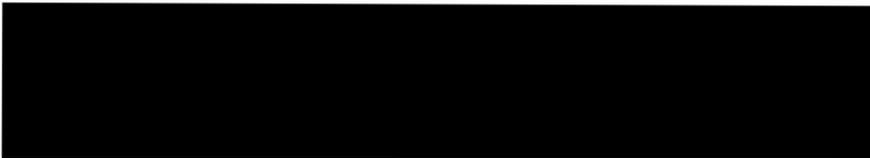
Date: APR 17 2008

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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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 District Director, Los Angeles, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application, finding that the applicant failed to establish that she entered the United States prior to January 1, 1982. The director also found that the applicant failed to establish that she resided continuously in the United States, prior to January 1, 1982, and through May 4, 1988. Finally, the director found that the affidavits submitted by the applicant were not credible because they were notarized by [REDACTED], who was convicted for conspiracy to file false statements.

On appeal, counsel for the applicant asserts that the applicant cannot establish her initial date of entry with documentation because she entered without inspection through Canada. Counsel further asserts that the applicant has continuously resided in the United States for the requisite period, and that the affidavits submitted are sufficient to establish this. Finally, counsel asserts that the applicant hired [REDACTED] to prepare her application and was not aware that Jose [REDACTED] notarized the affidavits submitted with her application.

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).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that 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 record reflects that on January 4, 1990, the applicant submitted a Form I-687, Application for Status as a Temporary Resident. On January 14, 1997, the director revoked the applicant’s membership in the *Catholic Social Services v INS (CSS)* class and permanently closed the applicant’s CSS case.

On June 2, 2002, the applicant submitted the current Form I-485, Application to Register Permanent Residence or Adjust Status. On February 1, 2006, the applicant appeared for an interview based on her application. During the interview, the applicant stated that she left the United States and returned to the Philippines in 1987, approximately one year after she had first entered the United States.

On February 2, 2006, the director sent the applicant a Notice of Intent to Deny (NOID). The director stated that the applicant had not submitted evidence of her entry to the United States prior to January 1, 1982. The director also stated that the applicant did not submit evidence to establish that she continuously resided in the United States in an unlawful status during the requisite time period. The director informed the applicant that she had 30 days from the receipt of the NOID to rebut or submit evidence to overcome the director’s intent to deny his application. The applicant did not respond to the NOID.

On October 9, 2003, the director denied the application, finding that the applicant failed to overcome the grounds for denial as stated in the NOID. The director also found the applicant was

ineligible to adjust status to temporary residence under § 201 of the Immigrant Reform and Control Act.

On appeal, counsel for the applicant asserts that the applicant cannot establish her date of entry with documentation because she entered without inspection through Canada. Counsel further asserts that the applicant has continuously resided in the United States for the requisite period, and that the affidavits submitted are sufficient to establish this. Finally, counsel asserts that the applicant hired [REDACTED] to prepare her application and did not know that [REDACTED] notarized the affidavits submitted with her application. Counsel submits two updated affidavits from individuals who previously wrote affidavits on the applicant's behalf.

The issue in this proceeding is whether the applicant continuously resided and was continuously physically present in the United States during the requisite period. The applicant submitted letters of employment as evidence to support her Form I-485 application. The following evidence relates to the requisite period:

- The applicant submits an April 7, 1996, employment verification letter from [REDACTED] a naturalized U.S. citizen. Ms. [REDACTED] states that she has known the applicant since January of 1981 and that she first met the applicant through her cousin's friend at a social event. Ms. [REDACTED] states that the applicant babysat for her stepson from January 1981 to May 1983 and that she always paid the applicant in cash. Ms. [REDACTED] states that she would have continued employing the applicant, but the applicant moved away with relatives. Ms. [REDACTED] states that she keeps in touch with the applicant via telephone and at social functions of mutual friends. Ms. [REDACTED] asserts that the applicant has been continuously residing in the United States since January of 1981 through the present.
- The applicant also submits an April 7, 2006, employment verification letter from [REDACTED] a naturalized U.S. citizen. Ms. [REDACTED] states that she has known the applicant since July of 1985. She states that she first met the applicant at a family social gathering and that the applicant was looking for employment. [REDACTED] states that the applicant worked as a part-time babysitter for her from July 1985 to December 1985, and that she paid the applicant in cash. [REDACTED] states that she keeps in contact with the applicant by telephone and calls her from time to time to see how she is doing. She states that she knows the applicant has resided continuously in the United States since at least July 1985.

These affidavits can be given little evidentiary weight. Specifically, both affiants failed to provide their own addresses or the applicant's address at the time of employment, as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the affiants also failed to declare which records their information were taken from, to identify the location of such records, and to state whether such records are accessible, or, in the alternative, to state the reason why such

records are unavailable. Furthermore, the letters did not list the applicant's job duties and lack sufficient detail to be found probative.

Although the applicant has submitted two letters in support of her application, she has not provided any contemporaneous evidence of residence in the United States during the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period.

The record of proceedings contains various other documents, including the birth certificate of the applicant's daughter, [REDACTED] indicating that the child was born in Los Angeles, California, on September 14, 1991; the applicant's marriage certificate, indicating she was married in Clark County, Nevada, on April 25, 1998; 1990, 1991, and 1992 Internal Revenue Service (IRS) Forms 1040, U.S. Individual Income Tax Returns; pay stubs from two employers for pay periods in 1989, 1990, 1992, and 1994; utility bills from 1994; and [REDACTED]'s 2001-2002 5<sup>th</sup> grade report card. None of this evidence addresses the applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which she claims to have first entered the United States in October 1980, through the U.S./Canada border, and to have resided for the duration of the requisite period in California. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from her own testimony. The applicant has failed to do so.

Given the applicant's reliance upon documents with minimal probative value, the applicant has failed to establish continuous residence in an unlawful status in the United States for the requisite period, as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*.

Therefore, based on the above, the applicant has failed to establish 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, he 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.