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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 03 164 61664

Office: PHOENIX

Date: DEC 01 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 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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, Phoenix, Arizona, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant failed to establish that she entered the United States before January 1, 1982, and resided in a continuous unlawful status from then through May 4, 1988, as required under section 1104(c)(2)(B) and (C) of the LIFE Act.

On appeal, counsel submits a brief and an affidavit from the applicant.

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 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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). *See* 8 C.F.R. 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.12(f). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

The applicant filed the current Form I-485, Application to Register Permanent Resident Status or Adjust Status, under the LIFE Act on March 13, 2003. On August 23, 2007, the director denied the application. The applicant, through counsel, filed her appeal from that decision on September 19, 2007.

The applicant, who was born in Mexico on January 31, 1970, claims to have initially come to the United States without inspection in August 1981 (when she was 12 years old) to live with her sister and take care of her sister's children. She claims that she did not attend school and worked part-time in the fields on weekends and holidays when her sister was not working.

A review of the record reveals that, aside from her own testimony and affidavits, the applicant has provided the following documentation throughout the application process in an attempt to establish her continuous unlawful residence since before January 1, 1982, through May 4, 1988:

1. A fill-in-the-blank affidavit, dated December 18, 1993, from [REDACTED] (the affiant's last name on the affidavit is not entirely legible) stating that he had personal knowledge that the applicant resided in Canutillo, Texas, from August 1982 to December 1993 – that he met her when working in fields along the Grande river in the New Mexico valley.
2. A notarized letter, dated December 17, 1993, from [REDACTED] stating that the applicant worked for him for 126 days during 1985, 1987, and 1987 at ranches/farms in New Mexico.
3. A notarized letter, dated February 14, 2004, from [REDACTED] stating that he had known the applicant since she married in 1985 and that they have been in contact since then – that she left El Paso in 1989 and now lives in Phoenix.
4. A letter, dated October 30, 2006, from [REDACTED] the applicant's sister, stating that the applicant lived with her in El Paso and Canutillo, Texas, from 1981 through 1988 – that she (the applicant) took care of her ([REDACTED]) children and on weekends the applicant would work the fields picking onions and chiles.

On appeal, counsel asserts that the applicant is unable to provide photographs to support her claim of unlawful continuous in the United States during the requisite period because her family consisted of simple agricultural workers who did not have cameras or participate in vacations to Disneyland, U.S. landmarks, family reunions and celebrations. Counsel concludes that the applicant has fulfilled the LIFE Act requirements and has provided credible testimony and evidence in the form of affidavits from people she knew while living with her sister in Texas.

In summary, the applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), no hospital or medical records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv), and no attestations from churches, unions or other organizations according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(v). **The applicant also has not provided any documentation according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (K).** The documentation provided by the applicant consists solely of personal and third-party affidavits (“other relevant documentation”). The third-party affidavits lack specific details as to how the affiants knew of the applicant’s entry into the United States, and details regarding how often and under what circumstances they had contact with the applicant throughout the requisite time period. Furthermore, only one of the four affidavits provided – from the applicant’s sister – attests to the applicant’s presence in the United States prior to January 1, 1982.

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 (5th ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

Given the insufficiency in the evidence provided, 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, 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). Thus, 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.