



U.S. Citizenship
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[REDACTED]

FILE: [REDACTED] Office: ATLANTA Date: FEB 26 2008
MSC 02 25060839

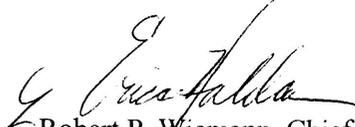
IN RE: Applicant: [REDACTED]

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:
[REDACTED]

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

The district director denied the application because the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. Specifically, the director determined that the applicant had failed to submit sufficient evidence to definitively establish her presence in the United States.

On appeal, counsel states that the applicant submitted substantial documentary evidence including letters and affidavits from friends and clergy. She further asserts that the director disregarded the applicant's response to the Notice of Intent to Deny, which included new evidence not previously submitted. Counsel concludes by contending that the applicant has met her burden of proof and has established her eligibility for permanent resident status under the LIFE Act by a preponderance of evidence.

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).

Although Citizenship and Immigration Services (CIS) 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In the affidavit for class membership, which she signed under penalty of perjury on August 25, 1992, the applicant stated that she first arrived in the United States in October 1981, when she crossed the border without inspection. On her Form I-687, Application for Status as a Temporary Resident, which she also signed under penalty of perjury, the applicant claimed to live at [REDACTED] in Marietta, Georgia, during the requisite period.

She further claimed under section 36 of the form that she worked for [REDACTED] from October 1981 to April 1989.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant furnished the following evidence:

- (1) Affidavit dated August 15, 1992 by [REDACTED], claiming that she was a friend of the applicant for a long time and that she briefly traveled outside the United States in 1987, and knows this because she took her to the airport.
- (2) Affidavit dated July 20 1992 by [REDACTED] claiming that he has known the applicant for the past 11 years.
- (3) Notarized letter dated July 24, 1992 by [REDACTED] claiming that she met the applicant in August 1982 through mutual friends and that they have remained friends since that time.
- (4) Second affidavit by [REDACTED] dated November 12, 1991, claiming that the applicant worked for her as a housekeeper from October 1981 to April 1989.

- (5) Letter dated August, 1992 by [REDACTED], claiming that the applicant was employed by her mother, [REDACTED] from 1986 to 1992. She claims that she worked every Saturday and Sunday but omits the nature of her duties.
- (6) Letter dated November 30, 2003 from [REDACTED] of Our Lady of Americas, claiming that the applicant has been an active member of the parish community since 1982.
- (7) Third affidavit by [REDACTED] claiming that she has known the applicant since October 1981 and offers her recommendation.
- (8) Affidavit of applicant dated August 28, 2001, claiming that she has been in the United States since 1981. She claims she departed the United States one time, from June 26, 1987 to July 15, 1987.

On September 25, 2005, after the applicant's scheduled interview, the director issued the NOID, noting that the record did not contain credible and verifiable evidence that the applicant continually resided in the United States since before January 1, 1982 through May 4, 1988. The applicant was afforded the opportunity to submit additional evidence in support of the application.

In response, counsel for the applicant submitted a letter dated February 21, 2005 with new affidavits in support of the application. The AAO notes that the director did not acknowledge the receipt of the applicant's response. The director's failure to consider this evidence is harmless because the AAO conducts a *de novo* review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6).¹

In response to the director's request, the applicant submitted the following documentation:

- (1) Affidavit of applicant dated February 16, 2005, restating that she first entered the United States in October 1981. The applicant acknowledges that she does not have proof of her illegal entry since she entered without inspection. She claims that she lived with [REDACTED] from her arrival through April 1989. She further claimed to work for the [REDACTED] family on weekends as of August 1986. She concedes that she did not hold a formal job during the requisite period, and cared for elderly and children as needed.
- (2) Second letter (undated) from [REDACTED], claiming that the applicant worked for her mother part time from 1986 to 1992 and was paid in cash.
- (3) Fourth affidavit by [REDACTED] dated February 12, 2005, claiming that the applicant lived with and worked for her from October 1981 to April 1989. She claims that since she was paid in cash, she has no record of payments. She further claims the applicant did not pay for utilities, and their relationship was informal with no contracts or agreements.

¹ The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The director denied the application on March 10, 2005, finding that there was insufficient evidence to show that she was unlawfully present in the United States from before January 1, 1982, the beginning of the qualifying period, through May 4, 1988. Although the director noted the applicant's numerous affidavits of acquaintance, the director noted there was no evidence of the applicant's entry prior to January 1, 1982 and no evidence of her continued presence in the United States through May 4, 1988.

On appeal, counsel for the applicant asserts that the applicant satisfied her burden of proof by a preponderance of the evidence, and specifically alleges that the director erred in failing to consider the affidavits submitted in response to the NOID. The AAO has reviewed those documents along with the previously submitted documents, and concurs with the director's finding.

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 quality 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 petitioner 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 or petition.

Here, the submitted evidence is not relevant, probative, and credible.

The *Matter of E-- M--* decision provides guidance in assessing evidence of residence, particularly affidavits. In that case, the applicant had established eligibility by submitting (1) the original copy of his Arrival Departure Record (Form I 94), dated August 27, 1981; (2) his passport; (3) affidavits from third party individuals; and (4) an affidavit explaining why additional original documentation is unavailable. Furthermore, the officer who interviewed that applicant recommended approval of the application, albeit, with reservations and suspicion of fraud. In this case, the interviewing officer recommended denial of the application, and there is no Form I-94 or admission stamp in a passport establishing the applicant entered the United States prior to January 1, 1982.

Although the applicant claims she entered the United States in October 1981, she likewise claims that she entered without inspection. As a result, there is no documentary evidence in the form of an arrival-departure record or stamped passport to verify the exact date of entry. The applicant provided several affidavits from [REDACTED] claiming the applicant lived and worked with her from October 1981 to April 1989. However, all four documents provide only minimal information and amount to only a few sentences. The same applies to the informal letters of [REDACTED] who again says that the applicant worked for her

mother from 1986 to 1992. No evidence of payments can be produced as the applicant was allegedly paid in cash.

Furthermore, the other affidavits and letter from her pastor provide no details regarding the origin of the information being attested to or the nature of the affiants' relationship with the applicant.

While there is no specific regulation which governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements which affidavits from organizations are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information which 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), 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. *See* 8 C.F.R. § 245a.2(d)(3)(v).

While these standards are not to be rigidly applied, an application which is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on affidavits which are considerably lacking in such basic and necessary information.

The affidavits submitted in support of this application fall far short of meeting the above criteria. For example, [REDACTED] did not mention that the applicant lived with her until the fourth affidavit, submitted in 2005. .

Given the absence of contemporaneous documentation and the reliance on affidavits which do not meet basic standards of probative value, it is concluded that the applicant has failed to establish, by a preponderance of evidence, that she continuously resided in the United States in an unlawful status since before January 1, 1982 through 1984. Therefore, the applicant 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.