



U.S. Citizenship
and Immigration
Services

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FILE:

MSC 03 070 61489

Office: SAN FRANCISCO

Date:

FEB 26 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 application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, San Francisco, 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.

On appeal, counsel provides a brief statement on Form I-290, and asserts that the applicant has met her burden of proof and has established his eligibility for permanent resident status under the LIFE Act by a preponderance of evidence, and further alleges that the applicant had submitted numerous affidavits by United States citizens who claimed to have personal knowledge of the applicant's residence.

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 February 9, 1990, the applicant stated that she first arrived in the United States in July 1981, when she crossed the border without inspection. On her Form I-687, Application for Status as a Temporary Resident, which he also signed under penalty of perjury on February 9, 1990, the applicant claimed to live at the following addresses in Haywood, California during the requisite period:

May 1981 to February 1987:

March 1987 to Present:



Regarding her employment history, the applicant also claimed on Form I-687 to have held the following jobs during this period:

September 1981 to December 1981: Flower Sales

March 1982 to October 1987: Babysitting

January 1987 to Present: Dressmaking

No names or additional details regarding her employers were provided.

The AAO concurs with the director's finding that the applicant submitted insufficient evidence to establish continuous residence and physical presence in the United States since before January 1982 through May 4, 1988. No independent documentation accompanied the applicant's Form I-485, Application to Register Permanent Residence or Adjust Status, which she filed on December 9, 2002. Consequently, the director issued a Notice of Intent to Deny / Request for Evidence on December 11, 2003, in which he requested documentary evidence in support of the applicant's claim that she continuously resided in an unlawful status since before January 1, 1982 to May 4, 1988.

In response, the applicant submitted the following evidence:

- (1) Affidavit dated February 17, 2004 from [REDACTED], who claimed that the applicant was in the United States since March 1982. The affiant further claimed that the applicant stated with him as a paying guest from April 1987 to January 1991. No additional information, such as the address at which he resided during this time or the basis of his acquaintance with the applicant, was provided.
- (2) Affidavit dated February 28, 2004 from [REDACTED] who claimed that he has known the applicant "since she came to the United States in December 1984." No additional information was provided.

The director denied the application on September 13, 2005, noting that there was insufficient evidence to show that the applicant was continuously residing in an unlawful status in the United States from before January 1, 1982, the beginning of the qualifying period, through May 4, 1988. Although the director noted the two affidavits submitted in support of the application, the director concluded that the vague statements and minimal information provided therein did not satisfy the applicant's burden of proof in these proceedings.

On appeal, counsel for the applicant asserts that the applicant satisfied her burden of proof by a preponderance of the evidence. No new evidence or documentation is submitted.

Upon review, the AAO concurs with the director's decision.

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.

Although the applicant claims on the affidavit for class membership that she entered the United States in July 1981, she likewise claims on Form I-687 that she began residing in the United States in May 1981 at [REDACTED]. Furthermore, the affidavits submitted do not support the claim that she entered the United

States prior to January 1, 1982; in fact, they provide different dates from those provided by the applicant. Mr. [REDACTED] claims the applicant has been in the United States since March 1982, whereas [REDACTED] claims that the applicant came to the United States in December 1984. While it is possible that the statements of the two affiants refer to the date they first met the applicant, and not her date of entry, no additional information to clarify these confusing statements is provided. These contradictions, coupled with the applicant's conflicting statements provided under oath, cast doubt on the validity of the application as a whole. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591 (BIA 1988).

As stated above, the inference to be drawn from the documentation provided shall depend on the extent of the documentation. Although two affidavits of acquaintances have been submitted, there are several unresolved inconsistencies contained therein which the applicant failed to clarify. These inconsistencies would not necessarily be fatal to the applicant's claim, if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony provided.

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. The affidavits of both [REDACTED] and [REDACTED] omit critical information, such as the dates of the applicant's continuous residence to which the affiants can personally attest; the address(es) where the applicant resided throughout the period which the affiants have known the applicant; the basis for the affiant's acquaintance with the applicant; and the origin of the information being attested to. The brief and somewhat generic statements set forth in the two affidavits fail to conform to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3).

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 he 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.