



U.S. Citizenship
and Immigration
Services

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FILE:

MSC 03 197 60344

Office: CHICAGO

Date:

JAN 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. 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, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate that she had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

On appeal, counsel contends that the applicant did provide documentation, including affidavits, which established her continuous unlawful residence during the requisite period. Counsel asserts that the director did not follow internal policy and did not give proper weight to the evidence submitted with the 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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she continuously resided in the United States in an unlawful status since January 1, 1982, through May 4, 1988. Here, the submitted evidence is not sufficient.

In a May 10, 2004, Notice of Intent to Deny (NOID), the director stated that the evidence submitted by the applicant failed to establish her continuous unlawful presence in the United States from January 1, 1982, through May 4, 1988. The record does not reflect that any evidence was submitted. The director granted the applicant thirty (30) days to submit additional evidence. The record reflects that no new evidence was received. On October 8, 2004, Notice of Decision, the director denied the instant application based on the reasons stated in the NOID.

On appeal, counsel contends that the applicant provided documentation, including affidavits¹, in support of her application. Counsel contends that the director violated internal policies and is required to accept affidavits as evidence of continuance residence in the United States. Counsel cites an Immigration and Nationality Services (now Department of Homeland Security or DHS) internal agency document.²

The applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status pursuant to Section 245A of the Immigration and Nationality Act in March 1990. In support of her Form I-687 application, the applicant submitted her own affidavit dated March 14, 1990. She stated that she first entered the United States on October 9, 1980, as an undocumented alien. She further stated that she went to India to visit family from February 1985 to March 10, 1985, from August 1987 to September 15, 1987, and from December 1988 to January 23, 1989. She stated that she entered with a visa on January 23, 1989. The applicant provided her I-94, Departure Record, which contains an entry stamp into the United States on January 23, 1989. To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(16). The record does not reflect that the applicant submitted any other evidence apart from her own testimony to establish her continuous unlawful residence during the requisite period.

Based on the above evidence, it is clear that the applicant was present in the United States on January 23, 1989. However, the applicant has failed to provide relevant, probative, and credible evidence of her residence in the United States prior to January 1, 1982, and continuous unlawful

¹ The record contains only one affidavit, that of the applicant.

² 66 No. 12 Interpreter Releases 347, Appendix I, 358-360 (March 27, 1989).

residence through May 4, 1988. The applicant has not provided any verifiable, contemporaneous evidence of residence in the United States during the duration of the requisite period. The absence of sufficiently detailed and consistent supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), 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 one document with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

Therefore, based on the above, the applicant has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 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.