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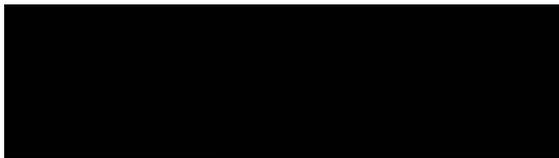
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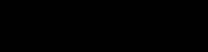
U.S. Citizenship
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Services

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FILE:



Office: NEW YORK

Date: JUL 10 2008

MSC 02 172 61056

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:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The district director denied the application because the applicant failed to demonstrate that she entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

On appeal, the applicant contends that the director's decision is erroneous. She asserts that she has provided sufficient evidence to establish her eligibility under the LIFE Act.

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 entered the United States before January 1, 1982, and continuously resided in an unlawful status in the United States during the requisite period. Here, the applicant has met this burden.

In the Notice of Intent to Deny (NOID), dated December 8, 2006, the director stated that the applicant failed to provide sufficient evidence to establish her claim. Specifically, the director noted three discrepancies in the record which cast doubt on the credibility of the applicant's claim. In response to the NOID, the applicant submitted her own declaration in order to reconcile the discrepancies and additional evidence. In the Notice of Decision, dated January 9, 2007, the director determined that the information and documentation failed to overcome the grounds for denial stated in the NOID.

First, in the NOID, the director noted that the applicant's statement regarding her 1987 absence was inconsistent. The record contains an affidavit of circumstances from the applicant, dated April 23, 1990. The applicant stated that she entered the United States in May 1980 from Puerto Rico and that she left the United States in July 1987 to go to the Dominican Republic. She indicated that the purpose of her absence was to see her sick son. She provided a medical certificate confirming that her son, [REDACTED], was diagnosed with acute bronchitis on July 8, 1987, in the Dominican Republic. She also provided an airline ticket in her name, issued on June 26, 1987, and a travel date of July 3, 1987. The director noted that the airline ticket was purchased prior to her son's diagnosis and, therefore, the applicant's statement was inconsistent. The director determined that this inconsistency cast doubt on the veracity of the applicant's testimony.

In response to the NOID, the applicant asserted that her son became ill over a period of time prior to his diagnosis on July 8, 1987. In the NOD, the director determined that the applicant's explanation was insufficient. The director noted that the medical certificate did not indicate that the applicant's son had a deteriorating condition. However, the AAO finds that the medical certificate made no mention of the patient's condition prior to diagnosis or post diagnosis. The certificate only recommends that the patient have absolute rest for 15 days. Based on the evidence, the AAO cannot conclude whether or not the applicant's son had a deteriorating condition. It is not improbable that the applicant's son was ill but remained undiagnosed at the time the applicant bought her airline ticket and traveled to the Dominican Republic. In lieu of conclusive evidence, the AAO withdraws the director's finding that the applicant's statement regarding her 1987 absence is inconsistent.

Second, the director noted that the affidavit of [REDACTED] contradicted the affidavit of [REDACTED]. Both affiants stated that the applicant resided with them when the applicant first arrived in the United States. [REDACTED] stated that the applicant, her mother-in-law, resided with her upon

arrival in 1980 at [REDACTED] in New York. She also stated that the applicant currently resides with her and her husband. She provided her lease for the years 1989-1991.

[REDACTED] the applicant's nephew, stated that the applicant lived with him and his mother [REDACTED] at [REDACTED] when she arrived from Dominican Republic in 1980. He further stated that since 1982 he has been residing at [REDACTED] in New York. He provided a copy of his current lease, which bears no probative value. While the lease may demonstrate that he currently lives at [REDACTED] it does not show that he has resided there since 1982. His affidavit provides little probative value.

The AAO notes that the record also contains an affidavit from [REDACTED] Ms. [REDACTED] stated that the applicant, her aunt, resided in the United States since May 1980 with her parents ([REDACTED] and [REDACTED]) at [REDACTED] and later at [REDACTED] in New York. Her affidavit corroborates the affidavit of [REDACTED]

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In response to the NOID, the applicant asserted that she lived with both [REDACTED] and [REDACTED]. The applicant also submitted an affidavit from [REDACTED] a. Ms. [REDACTED] stated that she has known the applicant since 1980 when the applicant lived at [REDACTED] with her sister, [REDACTED] and family and a board person named [REDACTED]. She also stated that the applicant later moved to [REDACTED]. [REDACTED] provided a copy of her lease from 1979-1980 and 1986-1988 to prove her own residence in the United States. The applicant has submitted independent, objective evidence, which appears to be credible and verifiable. Therefore, the applicant has reconciled the director's noted discrepancy.

Finally, the director noted an inconsistency in the yearly and monthly rent amounts of Ms. [REDACTED] 1989-1991 lease agreement. While the inconsistency exists, the AAO concludes that the discrepancy is not relevant to the applicant's claim as it falls outside the statutory period.

Based on the above, the AAO concludes that the applicant has overcome the grounds for denial as stated in the NOID. The record contains substantial evidence of the applicant's residence in the United States during the statutory period. Given this, the applicant has established entry into the United States prior to January 1, 1982, and continuous unlawful residence since such date through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act.

Accordingly, the applicant's appeal will be sustained. The district director shall continue the adjudication of the appeal for permanent resident status.

ORDER: The appeal is sustained.