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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

L2



FILE:

MSC 02 247 61065

Office: LOS ANGELES

Date:

JUL 11 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:

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.

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, Los Angeles, California, 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 had not demonstrated that she had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

On appeal, the applicant submits a brief statement.

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 district 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 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).

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

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i), letters from employers attesting to an applicant's employment must provide: the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and, identify the location of such company records and state whether such records are accessible or, in the alternative, state the reason why such records are unavailable. The regulation further allows that if official company records are unavailable, an affidavit form letter stating that the alien's employment records are unavailable and explaining why such records are unavailable may be submitted in lieu of meeting the requirements at (E) and (F) above.

An affidavit not meeting any of the foregoing requirements may still merit consideration as "any other relevant document" pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

On September 15, 2006, the district director issued a Notice of Intent to Deny (NOID) stating that an affidavit submitted by the applicant did not contain sufficient information and was not accompanied by corroborating documentation. The district director granted the applicant 30 days to submit a rebuttal to the notice. In response, the applicant submitted additional affidavits.

In a decision dated October 25, 2006, the district director denied the application stating that the documentation submitted in response to the NOID had failed to overcome the grounds for denial as stated in the notice. The district director specifically noted that there were internal inconsistencies between the applicant's testimony, applications, and documentation that called into question the credibility of the applicant's claims.

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

1. An affidavit, dated November 2, 1990, from [REDACTED] of South Gate, California, stating that the applicant had resided in Los Angeles, California since October 1981. The affiant is generally vague as to how he dates his acquaintance with the applicant, how often and under what circumstances he had contact with her during the requisite period, and lacks details that would lend credibility to his claim.
2. An affidavit, dated November 2, 1990, from [REDACTED] of Los Angeles, California, stating that she drove the applicant from the United States to Mexico to visit her (the applicant's) father on June 10, 1987, and that the applicant returned to the United States on June 28, 1987, having paid a "coyote" \$350.00 to cross the border from Mexico to California. This affidavit does not place the applicant in the United States prior to January 1, 1982.
3. An affidavit, dated October 6, 2006, from [REDACTED] stating that she met the applicant in or about November 1981, and that the applicant worked in her home as a baby-sitter, helping her raising her children. Ms. [REDACTED] states she ([REDACTED]) resided with her sister at [REDACTED] Los Angeles, California, from 1974 to 1982, and at [REDACTED] Los Angeles, California, from 1982 to 1988. As an "employment letter," the affidavit does not comply with the regulations set forth in 8 C.F.R. § 245a.2(d)(3)(i), as described above.
4. An affidavit, dated October 6, 2006, from [REDACTED] of Highland, California, stating that she knows the applicant because one of the applicant's sisters married her (Ms. [REDACTED]) cousin. Ms. [REDACTED] further states that the applicant came to the United States in 1981, worked for [REDACTED] in Los Angeles, and "she was living at [REDACTED] El Monte, California. [REDACTED] is also vague as to how she dates her acquaintance with the applicant, how often and under what circumstances she had contact with the applicant her during the requisite period, and lacks details that would lend credibility to her claim.
5. An affidavit, dated October 7, 2006, from [REDACTED] of Pomona, California, (previously of Los Angeles, California) stating that she has known the applicant since 1984 because they met at her children's school and became close friends – seeing each other frequently. Again, the affiant is vague as to how she dates her acquaintance with the applicant, how often and under what circumstances she had contact with the applicant her during the requisite period, and lacks details that would lend credibility to her claim.

On appeal, the applicant asserts that she has submitted sufficient proof that she entered the United States

before January 1, 1982, and resided in continuous unlawful status since that date through May 4, 1988.

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), and no hospital or medical records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv). The applicant also has not provided documentation (including example money order receipts, passport entries, children's birth certificates, bank book transactions, letters of correspondence, a Social Security card, or automobile, contract, and insurance documentation) according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (I) and (K). The documentation provided by the applicant consists solely of third-party affidavits ("other relevant documentation"). These documents lack specific details as to how the affiants knew the applicant – how often and under what circumstances they had contact with the applicant – during the requisite time period from prior to 1982 through 1988.

Furthermore, there is the issue of inconsistencies between the applicant's testimony, applications, and documentation, as cited by the district director in her decision to deny the application, that call into question the credibility of the applicant's claims. Firstly - on a Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act), submitted in or about November 1990, the applicant stated that she had not been employed in the United States since her claimed date of entry without inspection in October 1981. However, in No. 3, above, [REDACTED] claims to have employed the applicant as a baby-sitter since in or about November 1981. On appeal, the applicant states that because she was paid in cash, she did not consider that her working for Ms. [REDACTED] was "employment;" therefore, she did not list it on the Form I-687. Secondly, in No. 4, Ms. [REDACTED] indicates that "...when [the applicant] came to live in the United States in 1981 she started to work with [REDACTED] in Los Angeles, California. And she was living at [REDACTED] El Monte, CA 91732..." The district director had noted in her decision to deny the application that the applicant had indicated on her Form I-687 that she lived at [REDACTED] South Gate, California in 1981. On appeal, the applicant states that it was [REDACTED] not the applicant herself, who was living at [REDACTED], El Monte, California, in 1981. However, in No. 3, [REDACTED] provides her addresses from 1974 to 1988, and neither shows the El Monte, California, address.

The inconsistencies in the applicant's submissions have not been satisfactorily explained. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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 insufficiencies and inconsistencies noted in the documentation 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, and 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).

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.