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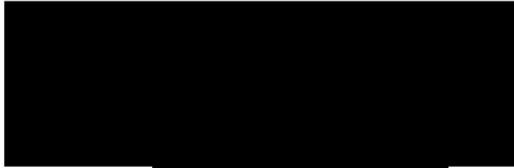
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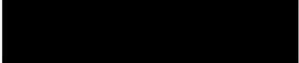
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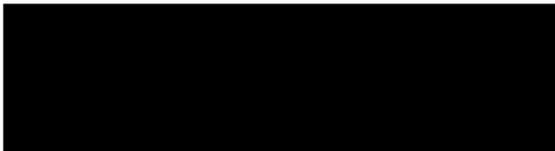
Applicant:



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. 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 determined that the applicant failed to establish that she entered the United States before January 1, 1982, and resided in a continuous unlawful status from then through May 4, 1988, and that she maintained continuous physical presence in the United States during the period from November 6, 1986 through May 4, 1988, as required under section 1104(c)(2)(B) and (C) of the LIFE Act.

On appeal, counsel for the applicant submits a brief.

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.

The regulations at 8 C.F.R. § 245a.2(d)(3) provide an illustrative list of contemporaneous documents that an applicant may submit. While affidavits “may” be accepted (as “other relevant documentation”) [See 8 C.F.R. § 245a.2(d)(3)(vi)(L)] in support of the applicant’s claim, the regulations do not suggest that such evidence alone is necessarily sufficient to establish the applicant’s unlawful continuous residence during the requisite time period.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i), states that 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.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v), states that attestations from churches, should: identify the applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where the applicant resided during the membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

On August 29, 2006, the district director issued a Notice of Intent to Deny (NOID)

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 September 28, 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.

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 March 24, 1990, from [REDACTED], of Los Angeles, California, stating that he met the applicant and her husband in May 1981, and that they had worked together. Mr. [REDACTED] is 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. Photocopies of a rental application, dated July 1, 1981, and generic rent receipts dated August through September 1981. On the rental application, the applicant indicated that she had just arrived in the United States, was staying with friends, and had been working at [REDACTED] (city and state not specified) for one month. It is noted that on a Form I-687, submitted by the applicant in March 1990, that she made no mention of having worked at such address.
3. An affidavit, dated December 12, 2005, from [REDACTED], stating that the applicant has been known to her since 1981. Ms. [REDACTED] does not state where, or under what circumstances she met the applicant, and is devoid of details regarding her claimed 24-year relationship with the applicant.
4. An affidavit, dated December 17, 2005 (similar to No. 3, above, and suffering from the same deficiencies), from [REDACTED]. Neither [REDACTED] nor [REDACTED] provided their current addresses and contact numbers.
5. Letters, dated January 30, 2002, and March 21, 2002, from A [REDACTED], President of Jamat-e-Masjidul Islam, Inc., Inglewood, California, stating that the applicant and her spouse have been known to him since 1981, are regular attendees at the Mosque. These letter do not conform to the regulation at 8 C.F.R. § 245a.2(d)(3)(v), cited above, regarding attestations.

On appeal, counsel for the applicant asserts that the applicant has submitted a number of declarations attesting to her physical presence in the United States since and prior to 1988, and should not be penalized due to the fact that the she has not provided “supporting documentary evidence.”

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 a generic rental application and rent receipts, and third-party affidavits (“other relevant documentation”). These third-party affidavits 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.

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 insufficiency in the evidence, 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, resided in this country in an unlawful status continuously since that time through May 4, 1988, and maintained continuous physical presence in the United States during the period from November 6, 1986 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Thus, she is ineligible for permanent resident status under section 1104 of the LIFE Act.

It is noted that a report from the Federal Bureau of Investigation (FBI) indicates that the applicant was charged in Hawthorn, California, on or about August 21, 1990, with one count of “HIT AND RUN: DEATH/INJURY.” The record reflects that the applicant was convicted of that charge, a violation of section 20001(A) (reduced to an infraction) of the Vehicle Code of California, on October 31, 1990

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