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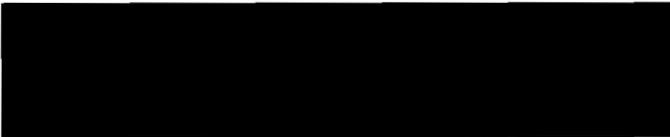
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

L2

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FILE:

MSC 01 284 60306

Office: MIAMI

Date:

**JUL 22 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. 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 District Director, Miami, Florida, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On September 27, 2005, the director denied the application, finding that, due to the applicant's conflicting claims and the lack of documentary evidence, she failed to establish by credible evidence that she arrived in the United States prior to January 1, 1982, and was in an illegal status as of that date through May 4, 1988. The director noted that the applicant claimed to have entered the United States on December 6, 1987, as a B-2 visitor for pleasure, and that Service records confirmed this entry. The director noted that the applicant's physical presence in the United States after December 6, 1987, is not in dispute.

On appeal, the applicant asserts that she does not know why her case was denied. She states that her file has proof that she has lived in the United States continuously since 1981.

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).

On July 11, 2001, the applicant submitted the current Form I-485, Application to Register Permanent Residence or Adjust Status. On June 2, 2004, the applicant appeared for an interview based on her application.

On August 13, 2004, the director sent the applicant a Notice of Intent to Deny (NOID) her application. The director stated that, due to the applicant’s conflicting claims and the lack of documentary evidence, she failed to establish by credible evidence that she arrived in the United States prior to January 1, 1982, and was in an illegal status as of that date through May 4, 1988. The director noted that the applicant claimed to have entered the United States on December 6, 1987, as a B-2 visitor for pleasure, and that Service records confirmed this entry. The director noted that the applicant’s physical presence in the United States after December 6, 1987, is not in dispute. The director informed the applicant that she had 30 days from the receipt of the NOID to rebut or submit evidence to overcome the director’s intent to deny his application. The applicant did not respond to the director’s request.

On September 27, 2005, the director denied the application, finding that the applicant failed to overcome the grounds for denial as stated in the NOID.

On appeal, the applicant asserts that she does not know why her case was denied. She states that her file has proof that she has lived in the United States continuously since 1981.

The issue in this proceeding is whether the applicant provided sufficient credible evidence to establish that she continuously resided and was continuously physically present in the United States during the requisite period.

The applicant did not submit any evidence to support her Form I-485 application. The only documentation in the record to support her assertion that she was here during the statutory period was not submitted with the current application, but is part of the record, as it was submitted in support of the applicant’s Form I-687, Application for Temporary Residence:

Letters and Affidavits

- A letter dated April 14, 1990, from [REDACTED] Ms. [REDACTED] states that the applicant and her husband have been employed by her since October 1981. She does not state the applicant's position or describe her duties in any way;
- A handwritten letter dated June 8, 1990, from [REDACTED] The affiant states that the applicant and her husband lived in his home in Miami, Florida, and paid half the rent from October 1981 to November 1987. He states that he is very proud of this couple which he considers family;
- A letter dated January 22, 2004, from [REDACTED] owner of Condominium Pharmacy. Mr. [REDACTED] states that the applicant and her husband have been customers in his pharmacy since 1983. The letter is not written on letterhead stationary. Mr. [REDACTED] does not provide any details or the applicant's address. Does not provide business records to date their patronage of his pharmacy;
- A letter dated February 2, 2004, from [REDACTED] Ms. [REDACTED] states that she has personally known the applicant and her husband since November 1981. She states that they are honest, sincere, and hardworking individuals. She does not specify when, where, or how she met the applicant. Ms. [REDACTED] fails to indicate any personal knowledge of the applicant's claimed entry to the United States or of the circumstances of her residence; and,
- A letter dated January 30, 2004, from [REDACTED] Ms. [REDACTED] states that she has personally known the applicant and her husband since November 1981. She states that they are honest, sincere, and hardworking individuals. She does not specify how she recalls when she met the applicant or state where or how she met. Ms. [REDACTED] fails to indicate any personal knowledge of the applicant's claimed entry to the United States or of the circumstances of her residence other than her address.

For the reasons noted above, these affidavits can be given little evidentiary weight and are of little probative value as evidence of the applicant's residence and presence in the United States for the requisite period. Although the applicant has submitted numerous affidavits in support of her application, she has not provided any contemporaneous evidence of residence in the United States during the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period.

The record of proceedings contains various other documents, including the birth certificates of the applicant's children, [REDACTED] born on October 19, 1989, in Dade County Florida, and [REDACTED], born on October 21, 1993, in Dade County, Florida, her children's school records, a Social Security Statement for the applicant's husband, [REDACTED], indicating earnings from 1996 to 2002, and a car insurance policy dated January 22, 2004. This evidence does not address the applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988.

The applicant also submitted copies of Internal Revenue Service (IRS) Forms 1040, Individual Income Tax Returns for the years 1982 through 1996. These documents can be given little evidentiary weight as they were not accompanied by IRS Forms W-2, Wage and Tax Statements, or proof of filing with the federal, state, or local government. It is also noted that the forms and attachments appear to have been altered.

The remaining evidence in the record is comprised of the applicant's statements in which she claims to have first entered the United States in 1981 and to have resided for the duration of the requisite period in Florida.

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, for 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 affidavits. 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 (5<sup>th</sup> 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.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence 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.