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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:

Office: MIAMI

Date:

MAY 05 2008

MSC 02 239 60566

IN RE:

Applicant:

PETITION:

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".

for 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 (director) in Miami, Florida. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to respond to a Notice of Intent to Deny (NOID) requesting additional evidence of her continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and continuous physical presence in the United States from November 6, 1986 through May 4, 1988, and therefore failed to establish her eligibility for legalization under the LIFE Act.

On appeal, the applicant asserts that she did not receive the NOID referenced in the decision, and would have complied with the request for additional evidence. The applicant requests that her case be reconsidered.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. *See* section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

“Continuous unlawful residence” is defined at 8 C.F.R. § 245a.15(c)(1) as follows: “An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.”

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. *See* 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 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 applicant, a native of Colombia who claims to have lived in the United States since 1978, filed her application for permanent resident status under the LIFE Act (Form I-485) on May 27, 2002. At that time the record included the following evidence of the applicant’s residence and physical presence in the United States during the 1980s:

- A Certificate of Baptism, dated October 1, 1981, identifying the applicant as one of the sponsors of a baptismal ceremony held on September 20, 1981 at the Church of St. Matthias in Huntington Park, California.
An affidavit by [REDACTED] of Dumont, New Jersey, prepared on an unspecified date in the early 1990s, certifying that the applicant worked for him as a babysitter and housekeeper from August 1981 to February 1984.
- A letter from [REDACTED], of Zimick Brothers Cleaning Service in Edgewater, New Jersey, dated February 7, 1990, stating that the applicant had been employed by the company from February 1984 to the present.
Two affidavits with identical fill-in-the-blank formats, dated February 12, 1991, by [REDACTED] and [REDACTED] residents of Dumont and Englewood, New Jersey, stating that they had known the applicant for 10 and 11 years, respectively.

On March 19, 2005, the District Director in Hartford, Connecticut, issued a Notice of Intent to Deny (NOID), in which he referred to the applicant’s interview in Hartford on December 20, 2002, at the conclusion of which she was issued a Form I-72 requesting more substantive and specific documentary evidence that she had resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and been continuously physically present in the United States from November 6, 1986 through May 4, 1988, as required

for LIFE legalization. It was noted that the applicant had not submitted any additional evidence after the interview in December 2002, and that the evidence of record was insufficient to validate her claim of continuous unlawful residence and continuous physical presence in the United States during the requisite time periods. The applicant was granted 30 days to submit additional evidence, but did not respond to the NOID.

On March 18, 2006, the director issued a Notice of Decision denying the application on the ground that no additional evidence had been submitted by the applicant to overcome the grounds for denial set forth in the NOID.

The applicant filed a timely appeal on April 10, 2006, asserting that she did not receive the NOID dated March 19, 2005, and would have complied with the request for additional evidence had she received it.

The AAO notes that the applicant was a resident of Norwalk, Connecticut, at the time she filed her application for LIFE legalization in 2002. The record shows that the applicant sent a letter to the Hartford District Office in July 2005 requesting a status report on her application, together with an "Alien's Change of Address Card" dated July 19, 2005, informing the office that she had moved to her current address in Pembroke Pines, Florida. The applicant's communication in July 2005 was four months after the issuance of the NOID in March 2005, which the Hartford District Office correctly sent to the applicant's last known address. Therefore, the applicant's failure to respond to the NOID will not be excused.¹

The AAO concurs with the judgments of the Hartford and Miami directors that the evidence of record – which has not been supplemented by the applicant since the original request for additional evidence at her interview in 2002 – does not establish the applicant's continuous unlawful residence and continuous physical presence in the United States for the requisite time periods for LIFE legalization.

While the baptismal certificate indicates that the applicant was present in the United States in September 1981, it does not show that she was a resident of the United States at that time or that she stayed in the United States thereafter. The affidavit from [REDACTED] in the early 1990s, stating that he employed the applicant as a babysitter and housekeeper from 1981 to 1984, contains no further information about the applicant. It does not indicate where he or the applicant resided at that time, does not indicate whether he maintained any contact with the applicant in the decade thereafter, and provides no details about the applicant's life in the United States. The affidavit is not supplemented by any documentary evidence of [REDACTED] relationship with the applicant – such as photographs, letters, or pay statements – nor any documentation of [REDACTED]'s own identity and presence in the United States during the 1980s. Similar shortcomings apply to the affidavits from [REDACTED] and [REDACTED] who

¹ The record also shows that the Miami District Office sent the applicant a notice at her new address in Florida on February 14, 2006, directing her to appear for an interview on her LIFE Act application on February 24, 2006. The applicant did not appear for the interview, or contact the district office in any manner.

simply claim to have known the applicant for 10 or 11 years without providing any information about her during the 1980s, or even stating that she lived in the United States during those years.

As for the letter from Zimick Brothers Cleaning Service, it does not comport with the regulatory requirements for employment letters, as specified in 8 C.F.R. § 245a.2(d)(3)(i), because it did not provide the applicant's address at the time of employment, did not describe the applicant's duties, did not declare whether the information was taken from company records, and did not indicate whether such records were available for review. Furthermore, the letter did not indicate how the applicant was paid, and was not supplemented by any earnings statements or other documentation of the applicant's employment status. In view of these omissions, the AAO concludes that the employment letter has little evidentiary weight.

Based on the foregoing analysis, the AAO concludes that the applicant has failed to establish that she resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and was continuously physically present in the United States from November 6, 1986 through May 4, 1988, as required under section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A). Accordingly, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

The appeal will be dismissed, and the application denied.

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