



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
MSC 02 222 61698

Office: NEW YORK

Date: **MAY 14 2008**

IN RE: Applicant:

[REDACTED]

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:

[REDACTED]

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 [or Records] 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. Wieman, 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 dismissed.

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, counsel asserts that the director's decision is arbitrary and capricious. Counsel addresses several issues raised by the director. Counsel contends that the entire record should be reviewed.

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 regulation at 8 C.F.R. § 245a.2(d)(3)(v) states that letters from churches, unions or other organizations attesting to the applicant's residence must: 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 membership period; include the seal of the organization impressed on the letter or the letterhead of the organization; establish how the author knows the applicant; and establish the origin of the information being attested to.

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.

In the Notice of Intent to Deny (NOID), dated on October 14, 2005, the director noted several discrepancies in the record. The director concluded that the applicant did not submit credible evidence to establish her claim. The director granted the applicant thirty (30) days to submit additional evidence. In rebuttal to the NOID, counsel attempted to reconcile the discrepancies in the record. The record reflects that additional evidence was received. In the Notice of Decision, dated September 1, 2006, the director determined that the submitted documentation was insufficient to overcome the grounds for denial. The director denied the instant applicant based on the reasons stated in the NOID.

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 failed to meet this burden.

The record contains a Form for Determination of Class Membership in *CSS v. Meese*, dated August 15, 1989. The applicant stated that she first entered the United States on December 16, 1981, without inspection. In support of her claim, the applicant submitted an undated declaration by [REDACTED] Mr. [REDACTED] stated that the applicant had resided in the United States since 1981 and worked for him from 1981 until 1987 when she left for Canada. Mr. [REDACTED] provided his place of address and telephone number. In the NOID, the director stated that the declaration was not notarized and the telephone number was not in service. In response, applicant, through counsel, submitted an affidavit by [REDACTED] dated November 30, 2005. Mr. [REDACTED] reaffirmed that he had known the applicant since 1981. The affiant stated that the applicant worked for him as a babysitter from August 16, 1982, through February 7, 1987. He also stated that he had Thanksgiving and Christmas dinner with the applicant from 1981 to 1989. While the affidavit is notarized by

counsel, the affiant failed to provide his current place of residence or telephone number. The affidavit is not verifiable. This brings into question the veracity of the affidavit.

The record contains a letter from [REDACTED] Admissions Office at Mercy College, sent to the applicant on May 15, 1985. The letter indicates that the applicant requested brochures about the college be sent to her. The letter does not contain any information about the applicant's place of residence or her continuous unlawful residence in the United States. The letter provides minimal probative value.

The record contains a declaration by [REDACTED], clerk at University Heights Presbyterian Church, dated on January 25, 2004. [REDACTED] stated that the applicant resided at [REDACTED] Bronx, New York 10467 since 1981. The declarant stated that the applicant later became a member of the church. Although the declarant stated that the applicant is an elder of the church, the declarant failed to show inclusive dates of membership, establish how the author knows the applicant, and establish the origin of the information being attested to as required under the regulation at 8 C.F.R. § 245a.2(d)(3)(v).

The record contains an undated declaration by [REDACTED], Pastor of University Heights Presbyterian Church. [REDACTED] stated that she has been the pastor for two and a half years. She also stated that the applicant had been a member since 1987. The declarant failed to state the address where the applicant resided during membership period, and establish the origin of the information being attested to as required under the regulation at 8 C.F.R. § 245a.2(d)(3)(v).

It is also noted that the declarations of [REDACTED] and [REDACTED] are inconsistent with the applicant's own testimony. The applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status pursuant to Section 245A of the Immigration and Nationality Act signed by the applicant on August 15, 1989. In his Form I-687, at Question #34, where the applicant was asked to list all affiliations with clubs, organizations, churches, unions, businesses, etc., applicant failed to list any association with the University Heights Presbyterian Church. These inconsistencies seriously bring into question the veracity of the declarants' claims.

The record contains a Presbyterian Hospital receipt in the applicant's name, dated February 18, 1982. The receipt indicates that the applicant resided at [REDACTED]. The record also contains a [REDACTED] receipt in the applicant's name, dated November 17, 1988. The receipt indicates that the applicant resided at [REDACTED] Bronx, New York 10473. The [REDACTED] receipt is inconsistent with the applicant's Form I-687. In his Form I-687, at Question #33, where asked to list all residences in the United States since first entry, the applicant stated that he resided at [REDACTED], in New York from December 16, 1981, to the present (August 15, 1989). This inconsistency brings into question the veracity of the [REDACTED] receipt.

Although the applicant has submitted several documents in support of her application, the applicant has not provided sufficient contemporaneous evidence of entry into the United States before January 1, 1982, or continuous unlawful residence in the United States during the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Here, the submitted evidence contains several discrepancies that remain unresolved by the applicant or counsel. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon documents with discrepancies and minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States during the requisite period.

Beyond the decision of the director, the record reflects that on November 18, 1999, the applicant pled guilty to section 240.20 of the New York Penal Code, *disorderly conduct*, a violation, in the New York City Criminal Court (Docket No. [REDACTED]). This single violation conviction does not render the applicant ineligible pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a).

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.