



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

MSC 02 200 61034

Office: DALLAS

Date:

MAY 23 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 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, Dallas, Texas, 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 established that she had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, counsel for the applicant submits a brief and additional documentation.

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)(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.

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.

Nevertheless, an affidavit not meeting all 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 January 9, 2006, the district director issued a Notice of Intent to Deny (NOID) listing the documentation the applicant had submitted in an attempt to establish her continuous residence in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.¹ Most of the primary evidence submitted by the applicant placed her in the United States in or after 1987. None of the documentation provided, including all of the affidavits from acquaintances, co-workers, and employers, established the applicant's presence in the United States prior to January 1, 1982. Therefore, the district director concluded that the Service [Citizenship and Immigration Services (CIS), formerly the Immigration and Naturalization Service (INS)] had no reason to believe it was more likely than not that the applicant had entered the United States prior to January 1, 1982, and had maintained unlawful presence as required. The district director granted the applicant 30 days to

¹ A copy of the NOID is contained in the record of proceedings.

provide additional documentation. The record of proceedings reflects that the applicant failed to respond to the NOID.

In a decision dated April 29, 2006, the district director denied the application on the grounds that the applicant had not established that she entered the United States before January 1, 1982, and resided continuously in an unlawful status from that date through May 4, 1988,

On appeal, counsel asserts that the applicant did, in fact, respond to the NOID, and provides documentation indicating that the applicant mailed something to the Service that was delivered on February 8, 2006. Counsel asserts that the applicant is unable to resubmit the documentation she claims to have submitted on February 8, 2006, because she did not keep copies of the originals, but feels the extra evidence would establish her eligibility to adjust her status under the LIFE Act. It is noted, however, that the applicant does not indicate specifically what additional evidence she allegedly submitted, other than the phone number of one affiant. It is unclear as to what decisive evidence the applicant could have submitted, because on June 13, 2004, in response to a request for additional evidence (on a Form I-72 dated May 7, 2004) the applicant wrote that she had searched all of her records and interviewed family members and friends hoping to find some of the items requested, but her searches and interviews were fruitless and she could provide no further documentation. She said she had never been a member of any church, never went to doctors, never entered into any disagreements, rent agreements were done by elder family members with whom she lived, and she did not have any deeds because she never purchased property.

As previously indicated, a review of the record reveals that the applicant has submitted no evidence to establish her presence in the United States prior to January 1, 1982. In fact, the only evidence provided of the applicant's presence at the beginning of the required time period is an affidavit from [REDACTED] Dallas, Texas, stating that the applicant was employed as a cook's helper from unspecified dates in January 1982 to June 1985.

Furthermore, the applicant's submissions with regard to her date of entry are contradictory. On a Form I-687, Application for Status as a Temporary Resident, submitted in July 1990, the applicant claimed to have entered the United States in November 1981. However, on a Form I-821, Application for Temporary Protected Status, filed on June 27, 2001, she claimed to have entered the United States on January 10, 1981. Although these discrepancies were brought to the applicant's attention in the NOID, they have not been addressed on appeal.

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 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.