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and Immigration
Services

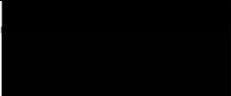
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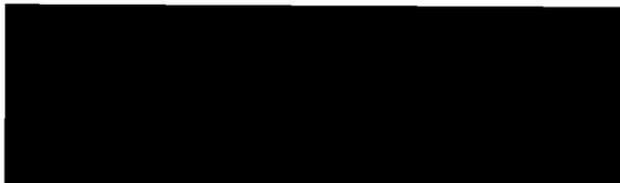
MAY 23 2008

– consolidated herein]

MSC 02 240 62912

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to 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 application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Dallas, Texas. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate that she resided in the United States in a continuous unlawful status from before January 1, 1982, through May 4, 1988.

On appeal, counsel for the applicant submits a brief.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988. The pertinent statutory provision reads as follows:

Section 1104(c)(2)(B)(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 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 its 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 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 as evidence in support of his or her application. 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 applicant filed her Form I-485, Application to Register Permanent Resident or Adjust Status, on May 28, 2002.

In the Notice of Intent to Deny (NOID), dated July 19, 2005, the district director advised the applicant that she intended to deny the application because the applicant had failed to establish her residence in the United States in a continuous unlawful status from before January 1, 1982, through May 4, 1988. The district director granted the applicant 30 days to submit additional evidence to overcome the reasons for the intended denial. The record reflects that the applicant failed to respond to the NOID.

In the Notice of Decision (NOD), dated November 30, 2005, the district director denied the application on the grounds stated in the NOID.

On appeal, counsel asserts that the required evidence was submitted with the application and that the denial decision was incorrect based on the evidence of record at the time of the initial decision. Counsel further asserts that the applicant “...had just entered the 8th grade when she came to the United States. Due to unlawful status and difficult family conditions, [the applicant] was not able to receive any kind of formal education. [The applicant] had to stay home to assist sick parent [sic]. She obtained home schooling during that period....”

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

The applicant claims to have initially entered the United States at the California/Mexico border in February 1981, at the age of eleven years, without having been questioned. She also claims to have departed the United States from May 13, 1987, to June 20, 1987, for a vacation and to visit family in Pakistan - having again reentered without inspection by car.

The applicant provided the following documentation throughout the application process in an attempt to establish her continuous unlawful residence since before January 1, 1982, through May 4, 1988:

1. An undated letter, notarized on May 23, 2002, from [REDACTED], of San Antonio, Texas, stating that he had known the applicant since late 1983

2. An undated affidavit, notarized on May 21, 2002, from [REDACTED] of Houston, Texas, stating that he had known the applicant since late 1981 – that their parents were friends “from back home.” Mr. [REDACTED] further states that during “the summer of 1985/86,” while he was living in Los Angeles, the applicant offered to baby-sit for his sister’s daughter, and that he paid her from time-to-time whenever services were rendered. Mr. [REDACTED] does not, in fact, attest to the applicant’s presence in the United States in 1981 – merely, that he had known her since that date.
3. A photocopy of a receipt (the name and address of the issuer are illegible) with the applicant’s name handwritten at the top, with a handwritten date of May 11, 1984.
4. A photocopy of a lease for a property in Houston, Texas, issued to [REDACTED] and [REDACTED] (the applicant’s parents), dated March 8, 1983, showing the applicant as an occupant.
5. A letter from [REDACTED] acting manager of Premier on Woodfair, Houston, Texas, stating that a request for lease confirmation from [REDACTED] Ponnjani for the period from March 1983 to April 1989 was received, but that no records were available since the management company was changed in 1988.

The record also contains a Form I-130, Petition for Alien Relative, filed on the applicant’s behalf by her mother on February 19, 1997. At the time of filing the Form I-130, the applicant’s mother indicated that the applicant had entered the United States without inspection on October 18, 1988. In support of the application, the mother provided an original certificate, issued by the [REDACTED] Govt. Girls Secondary School in Karachi, Pakistan, dated January 1985, stating that the applicant was a regular student at the school and had passed an examination in 1985, and was placed in grade D.

None of the documentation submitted in Nos. 1 through 5, above, place the applicant in the United States prior to March 1983. Furthermore, according to the documentation submitted in support of the Form I-130, the applicant was a student in Pakistan until 1985.

There are also discrepancies in the documentation presented pertaining to the applicant’s absences from the United States. In connection with a Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Act), submitted in 1990, the applicant indicated she had initially entered the United States in February 1981, and had only departed the United States on one occasion – from May 13, 1987 to June 20, 1987, for a vacation and to visit family in Pakistan. At the time of filing the Form I-130 on February 19, 1997, the applicant’s mother indicated that the applicant had last entered the United States on October 18, 1988. At the time of filing her Form I-485 on May 28, 2002, the applicant indicated that she had last entered the United States on an “unknown” date. On appeal, counsel states that the applicant “took brief and casual trips out of the United States....[T]he aggregate of all absences did not exceed one hundred and eighty days.” It appears that the applicant may have departed the United States on at least two occasions during the

period from November 6, 1986 through May 4, 1988, but the dates of the second departure (return date of October 18, 1988) has not been accounted for.

These discrepancies in the applicant's submissions have not been explained and call into question the applicant's ability to document the requirements under the statute and regulations. Doubt cast on any aspect of the evidence submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Furthermore, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 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).

Due to the insufficiencies and discrepancies 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). She has also failed to establish 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. Therefore, the appeal will be dismissed. Given this, she is ineligible for permanent resident status under section 1104 of the LIFE Act.

It is noted that as a result of being fingerprinted in connection with this application, Citizenship and Immigration Services (CIS) received a report from the Federal Bureau of Investigation (FBI) indicating that the applicant was arrested on November 22, 1990 in Los Angeles, California, for “Theft of Personal Property.” In any future proceedings before CIS, the applicant must submit evidence of the final court disposition of this arrest and any other charges against her.

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