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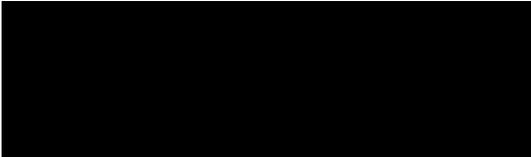
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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529-2090
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U.S. Citizenship
and Immigration
Services

L2



FILE:

MSC 03 247 62857

Office: PHOENIX

Date:

NOV 04 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:



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 cursive script that reads "John H. Vaughan".

for
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the under the Legal Immigration Family Equity (LIFE) Act was denied by the director in Phoenix, Arizona. 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 establish that she resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The director indicated that the applicant provided sufficient evidence to establish that she was residing in the United States for part of the required period for LIFE legalization – 1984 to 1987 – but failed to establish her residence before and after those years.

On appeal counsel asserts that the director failed to properly consider the evidence submitted by the applicant. In particular, counsel asserts that the director did not give proper weight to the affidavits in the record. In counsel’s view, the documentation submitted by the applicant is sufficient to establish her continuous residence in the United States during the requisite period for LIFE legalization.

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).

An applicant for permanent resident status under section 1104 of the LIFE Act (Life Legalization applicant) must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date through May 4, 1988. *See* § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States, and is otherwise eligible for adjustment of status under section 1104 of the LIFE Act. 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 states that “[t]ruth is to be determined not by the quantity of evidence alone but by its quality.” *Id.* at 80. 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 petitioner 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 petitioner 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 either to request additional evidence, or if that doubt leads the director to believe that the claim is probably not true, to deny the application or petition.

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 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 Mexico who claims to have lived in the United States since October 1980, filed her application for legal permanent resident status under the LIFE Act (Form I-485) on June 4, 2003.

After initially denying the application on November 21, 2006, based on the applicant’s failure to appear for a second interview, the director issued a Service Motion to Reopen the application on March 9, 2007. In granting the Service Motion to Reopen the director cited the documentation submitted by the applicant of her children’s school and vaccination records as establishing the applicant’s continuous residence in the United States from 1984 through 1987. The only evidence of the applicant’s residence in the United States before 1984, however, were three affidavits from persons who claimed to have known and/or resided with the applicant since 1980, which the director deemed insufficient to establish the applicant’s continuous residence during those years. The applicant was granted 30 days to submit additional evidence.

In response, the applicant submitted copies of some documentation already in the record, including affidavits from individuals who claim to have known or employed the applicant before 1984 and after 1987. In addition, a new affidavit was submitted from [REDACTED], a resident of Sylmar, California, dated March 17, 2007, stating that he had personal knowledge that the applicant resided in the United States from August 1984 to the present (March 2007), that he rented a room to the applicant, that they became friends, and that they have remained in contact and have visited each other whenever they can.

On June 11, 2007, the director denied the application, stating that the response to the NOID was insufficient to establish the applicant’s continuous residence in the United States in an unlawful status during the required period under the LIFE Act.

On appeal counsel asserts that the director failed to properly consider the evidence submitted by the applicant. Counsel asserts that the director did not give due weight to the affidavits. One additional affidavit is submitted, and counsel contends that the totality of the affidavit evidence is sufficient to establish the applicant's continuous residence in the United States during the requisite period for LIFE legalization.

In accord with the director's decision, the AAO determines that the applicant has established her continuous residence in the United States during the years 1984-1987. Specifically, the documentation pertaining to the applicant's eldest child, [REDACTED] shows that he received his first vaccination in San Fernando, California, on October 29, 1984 and entered school in San Fernando, on November 5, 1984. School records indicate that he attended through the 1986-1987 academic year, when he was in the 7th grade, but that he was back in Mexico for 8th grade during the 1987-1988 academic year. The vaccination and school records do not show any of the applicant's children, or the applicant herself, to have been present in the United States during the periods from before January 1, 1982 up to the fall of 1984 or from mid-1987 through May 4, 1988.

As evidence of her residence in the United States before October 1984 and after mid-1987, the applicant relies exclusively upon affidavits, including the following:

An affidavit from [REDACTED], president of Mary's Fashion in North Hollywood, California, dated March 1, 1988, stating that the applicant had been employed as a machine operator since July 24, 1986, and was paid \$6.00 per hour.

- An affidavit from [REDACTED], a resident of Livingston, California, dated July 10, 1987, stating that she had personal knowledge that the applicant resided in California from September 1980 to the present (1987), that the applicant resided in Livingston until August 1984 and thereafter in San Fernando, that she met the applicant at her business where the applicant established credit, that they became good friends, and that the longest period she had not seen the applicant was one and half years.

An affidavit from [REDACTED], a resident of Livingston, California, dated July 13, 1987, stating that she had knowledge that the applicant had been residing in the United States since October 1980 because the applicant resided in her home located at [REDACTED] Livingston, California, from October 1980 to August 1984.

- An affidavit from [REDACTED], a resident of San Bernardino, California, dated October 17, 1989, stating that she had personal knowledge that the applicant resided in California from August 1984 to the present (listing four different towns for those five years), and that the applicant's sister babysat her children.

- An affidavit from [REDACTED] (residence unstated), dated October 17, 1989, stating that he provided shelter, food, clothes and expenses to the applicant starting in November 1987.
- An affidavit from [REDACTED], a resident of Granada Hills, California, dated October 17, 1989, stating that he had personal knowledge that the applicant had resided in the United States from December 1984 to the present (listing four different towns for those five years), and that they were introduced to each other at a party that the affiant's sister had in December 1984.

An affidavit from [REDACTED] a from [REDACTED], a resident of Van Nuys, California, dated February 10, 2007, stating that she had known the applicant since 1980, that she met the applicant at a laundry place close to her home in Van Nuys.

- An affidavit from [REDACTED], a resident of Van Nuys, California, dated February 10, 2007, stating that she had known the applicant since 1980, and that she met the applicant at a laundry place close to her home in Van Nuys.

The affidavit of employment from [REDACTED], dated March 1, 1988, does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because it did not indicate the applicant's address during the period of employment, did not indicate whether the information was taken from company records, and did not indicate whether such records are available for review. Nor was the affidavit supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed during the years indicated. In addition, [REDACTED] did not provide any information about the applicant prior to July 1986 or after March 1988. Thus, the affidavit is not persuasive evidence that the applicant resided continuously in the United States from before January 1, 1982 through May 4, 1988, as required for legalization under the LIFE Act.

With regard to the other affidavits in the record, submitted by acquaintances who claim to have resided with or otherwise known the applicant during the time frames of 1980-1984 and 1987-1988, they have minimalist or fill-in-the-blank formats with little personal input from the authors. The affiants provide few details about the applicant's life in the United States, such as where she worked, and their interaction with her during the 1980s. Nor are the affidavits accompanied by any documentary evidence – such as photographs, letters, and the like – of the affiant's personal relationship with the applicant in the United States over the years. In view of these substantive shortcomings, the AAO finds that the affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

Based on the foregoing analysis of the evidence, 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, as required under section 1104(c)(2)(B)(i) of the LIFE Act. Accordingly, the applicant is ineligible for permanent resident status under 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.