



U.S. Citizenship
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FILE:

MSC 02 014 60423

Office: TAMPA

Date: NOV 28 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. The file has been returned to the 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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: On June 26, 2006, the Director, Tampa, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application, finding that the applicant did not establish, by a preponderance of the evidence, that she entered the United States before January 1, 1982, and resided continuously in the United States prior to January 1, 1982, and through May 4, 1988. The director noted several inconsistent statements the applicant has given regarding her initial and subsequent entries into the United States, including the fact that the applicant claims she was married in New York, but appears to have married in Trinidad. The director stated that the applicant did not submit independent, subjective evidence to overcome these inconsistencies.

On appeal, counsel for the applicant asserts that the applicant is not required to submit proof of her initial entry into the United States. Counsel asserts that the notarized affidavits the applicant submitted are sufficient for her to meet her burden of proof. Counsel cites to two AAO decisions, dated October 22, 2004, appealed from denials by the Portland and Los Angeles District Offices, in cases which counsel asserts the applicants “were unable to provide much documentary evidence, but submitted affidavits as evidence.”

An applicant for permanent resident status under section 1104 of the LIFE Act 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 and 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 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 states 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 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 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). See 8 C.F.R. § 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.12(f). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

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.

A LIFE Legalization applicant must also provide evidence establishing that, before October 1, 2000, he or she was a class member applicant in a legalization class-action lawsuit. See 8 C.F.R. § 245a.14. In this case, the record reflects that the applicant applied for such class membership by submitting a "Form for Determination of Class Membership in CSS v. Meese [CSS lawsuit]," accompanied by a Form I-687 "Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act)," dated October 13, 1991.

On October 14, 2001, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On August 12, 2003, the applicant appeared for an interview based on the application.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet her burden of establishing by a preponderance of the evidence, that her claim of entry into the United States before January 1, 1982, and continuous residence in the United States during the requisite period is probably true. Upon examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has failed to meet this burden.

The documentation regarding the applicant's continuous residence and continuous physical presence consists of two fill-in-the-blank "Affidavit of Witness" forms, both notarized on October 15, 1991. The form signed by [REDACTED] and [REDACTED] (last name illegible), states that the affiant has personal knowledge that the applicant has resided in the United States at two different addresses in Ozone Park, New York. The form language allows the affiant to fill in a statement that he or she "first met the applicant due to the following circumstances: ____." [REDACTED] added: "Husband

fixed my car and we became friends.” [REDACTED] (last name illegible) added: [REDACTED] has done housework for me since 1987 and her husband has been my friend and auto mechanic.” Although the dates and addresses provided are generally consistent with the information provided on the applicant’s Form I-687, these affidavits, prepared on a fill-in-the-blank form, contain minimal details regarding a relationship with the applicant during the requisite period. The affiants do not provide any details about when, where or under what circumstances they met the applicant. They fail to indicate any personal knowledge of the applicant’s claimed initial entry to the United States and provide hardly any details of the circumstances of her residence. Lacking relevant details, these statements can be given minimal weight as evidence of the applicant’s continuous residence in the United States during the required period.

As noted above, to meet her burden of proof, the applicant must provide evidence of eligibility apart from her own testimony. When viewed within the context of the totality of the evidence, such documentation is not sufficient to support a finding that it is more likely than not that the applicant resided continuously in the United States from before January 1, 1982, through May 4, 1988; nor does such documentation place the applicant in the United States prior to January 1, 1982.

Additionally, the applicant has failed to overcome the inconsistencies regarding her presence in the United States and Trinidad mentioned in the director’s decision and the June 26, 2006, Notice of Intent to Deny (NOID). It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant’s written statement, her husband’s statement, and her attorney’s briefs in response to the NOID and on appeal are not competent, objective evidence pointing to where the truth lies about her initial entry into the United States and her continuous residence during the LIFE Act statutory period.

The remaining evidence in the record is comprised of the applicant’s statements and application forms, in which she claims to have first entered the United States by car from Canada in December 1980, and to have resided for the duration of the requisite period in New York. As noted above, to meet his or her burden of proof, the applicant must provide evidence of eligibility apart from his or her own testimony. *The applicant has failed to do so. In this case, her assertions regarding her entry are not supported by any credible evidence in the record.*

Counsel’s reference to two AAO decisions is not persuasive. The evidence submitted by the applicant is different in quality and scope than the evidence in these two previous AAO decisions. As previously mentioned, the evidence in the current case consists exclusively of two fill-in-the-blank affidavits. The October 22, 2004, AAO case sustaining the appeal from a denial by the Portland District Office contained evidence that consisted of eleven affidavits, five of which were submitted in response the director’s NOID, and several pay statements from the applicant’s employer. In that case, the record also indicated that the director had called the applicant’s former employer, who verified the applicant’s employment there during the statutory period.

The AAO case sustaining the appeal from a denial by the Los Angeles District Office contained evidence that consisted of four affidavits, including one from the applicant's former roommate and two from former coworkers of the applicant, an employment letter, two earnings statements, a list of employment history, and a statement from the applicant in response to the director's NOID. The director in that case denied the application, in part because he found that the employment letter contradicted the applicant's statement regarding his employment. The AAO concluded that the applicant sufficiently explained the contradiction on appeal. The director also denied the application, finding that the fact that the applicant's children were born outside the United States to be a negative factor in his case. The AAO found the applicant's explanation about this persuasive and found that the affidavits submitted by the applicant were sufficient to meet his burden of proof. The AAO noted that the affiants provided their current addresses and all indicated their willingness to testify if necessary.

In the current case, unlike the two decisions counsel refers to, the applicant submits no documentation in addition to the two fill-in-the-blank affidavits. Furthermore, in the two previous cases, the applicants submitted affidavits from individuals who either worked or lived with the applicants for many years during the statutory period, indicating frequent contact and personal knowledge of continuous residence. In this case, the affidavits are from a woman who claims the applicant's husband fixed her car and they became friends and from a man who states the applicant did housework for him and that the applicant's husband is his friend and mechanic. The affiants offer no other details about the applicant's entry into the United States or her continuous residence here. They do not state when or where they met the applicant and do not indicate a willingness to testify in person on the applicant's behalf.

The absence of credible and probative documentation to corroborate the applicant's claim of entry and continuous residence for the entire requisite period detracts from the credibility of her claim. 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 on only affidavits, which lack relevant details, and the lack of any probative evidence of her entry and residence in the United States from prior to January 1, 1982 and through May 4, 1988, the applicant has failed to establish by a preponderance of the evidence that she maintained continuous, unlawful residence in the United States as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, 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.