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U.S. Citizenship
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L. Z.

FILE:



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OCT 03 2008

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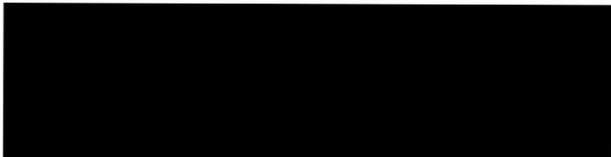
IN RE: Applicant:



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.

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 director in New York City. 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 entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal the applicant asserts that the director failed to give proper weight to the evidence she submitted in support of her claim.

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).

“Continuous unlawful residence” is defined at 8 C.F.R. § 245a.15(c)(1), as follows: “An alien shall be regarded as having resided continuously in the United States if *no single absence* from the United States has *exceeded forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed.” (Emphases added.)

“Continuous physical presence” is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: “An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of *brief, casual, and innocent absences* from the United States.” (Emphasis added.) The regulation further explains that “[b]rief, casual, and innocent absence(s) as used in this paragraph means *temporary, occasional trips abroad* as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.” (Emphasis added.) 8 C.F.R. § 245a.16(b).

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.

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)(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 Morocco who claims to have lived in the United States since May 1981, filed her application for legal permanent resident status under the LIFE Act (Form I-485) on May 21, 2002. The applicant was interviewed on May 4, 2004.

In a Notice of Intent to Deny (NOID), dated April 27, 2007, the director indicated that the applicant had not provided sufficient credible evidence to establish that she resided continuously in the United States from before January 1, 1982, through May 4, 1988. The director cited inconsistencies in the documentation submitted by the applicant. Specifically, the director cited inconsistencies in the letters from the Consulate General of Morocco, dated May 7, 1991 and March 19, 1998. The director indicated that the inconsistencies cast doubt on the authenticity of the documents. The director further indicated that other documentation in the record – specifically, copies of letter envelopes – was not credible. The applicant was granted 30 days to submit additional evidence.

The applicant failed to respond to the NOID and on June 11, 2007, the director denied the application based on the grounds cited in the NOID.

On appeal, the applicant asserts that the director failed to give proper weight to the evidence previously submitted into record. The applicant submitted a personal statement, dated July 5,

2007, in which she offered some explanations for the lack of documentation and evidentiary inconsistencies cited in the NOID. The applicant also submitted a photocopy of an affidavit by Mohamad Khan.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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 resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that he has not.

The only evidence in the record of the applicant's residence in the United States during the years 1981-1988 consists of the following documents:¹

A photocopy of an affidavit by [REDACTED], a resident of Ft. Lauderdale, Florida, dated November 10, 1990, stating that he had known the applicant and her husband since 1983, that they were neighbors in Stanford [sic], Connecticut; that the applicant and her husband worked as housekeepers in Boca Rotan, Florida; that he first met the applicant's husband on a holy day (Eid); and that since 1983 the applicant's husband visited the affiant's family on different occasions.

Seven letter envelopes addressed to the applicant at various addresses in the United States.

The applicant completed and submitted two Forms I-687. On the Form I-687 filed on April 30, 1991, the applicant indicated two absences from the United States. The first absence was in February 1983, returning to the United States in March 1983. The second absence was in November 1987, returning to the United States in December 1987. On a subsequent Form I-687 filed on July 22, 2005, the applicant listed only one absence from the United States, in August 1997, returning to the United States in September 1997. The two Forms I-687 also differ with regard to the address the applicant claims as her first residence in the United States from May 1981 to February 1983. On the first form filed in 1991, the applicant listed [REDACTED], Queens, New York, as her residence from May 1981 to February 1983, but on the form filed in 2005, the applicant listed [REDACTED], Somerset, New Jersey, as her residence from May 1981 to February 1983.

¹ These documents were submitted with a Form I-687 (application for status as a temporary resident), filed on April 30, 1991.

The inconsistencies noted above undermine the credibility of the applicant's claim that she entered the United States in 1981, and has resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. 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 without competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

The affidavit by [REDACTED], dated November 10, 1990, has little probative value as evidence of the applicant's residence in the United States from before January 1, 1982 through May 4, 1988, because the affiant only claimed to have known the applicant's family starting in 1983. The affidavit provided few details about the applicant's life in the United States and her interaction with the affiant over the years. The affidavit was not accompanied by any documentary evidence from the affiant – such as photographs, letters, and the like – of his personal relationship with the applicant in the United States from January 1, 1982 through May 4, 1988. In view of these substantive shortcomings, the affidavit has little probative value. It is not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

As for the seven letter envelopes in the file, the postmarks on four of the envelopes are dated in the 1990s which is outside the statutory period for LIFE legalization, and the postmark dates on the remaining three envelopes are illegible. Therefore the letter envelopes have no probative value as evidence of the applicant's 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 entered the United States before January 1, 1982 and 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, 8 U.S.C. § 245A(a)(2)(A). 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.