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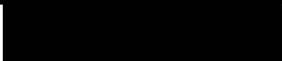
U.S. Citizenship
and Immigration
Services

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FILE:



MSC 01 265 60005

Office: NEW YORK Date:

OCT 03 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, New York, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had not demonstrated that she had entered the United States prior to January 1, 1982 and continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988.

On appeal the applicant asks that CIS reconsider her application.

An applicant for permanent resident status 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. 8 C.F.R. § 245a.11(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 amenability to verification. 8 C.F.R. § 245a.12(e).

An applicant must establish eligibility by a preponderance of the evidence. 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 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 to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Citizenship and Immigration Services (CIS) regulations provide an illustrative list of contemporaneous documents that an applicant may submit to establish presence during the required period. 8 C.F.R. § 245a.15(b)(1); *see also* 8 C.F.R. § 245a.2(d)(3)(vi)(L). Such evidence may include employment records, tax records, utility bills, school records, hospital or medical records, or attestations by churches, unions, or other organizations so long as certain information is included. The regulations also permit the submission of affidavits and any other relevant

document, but applications submitted with unverifiable documentation may be denied. Documentation that does not cover the required period is not relevant to a determination of the alien's presence during the required period and will not be considered or accorded any evidentiary weight in these proceedings.

On May 15, 2007, the director sent the applicant a Notice of Intent to Deny (NOID), which stated that the evidence submitted by the applicant was insufficiently probative of continuous unlawful residence in the U.S. from prior to January 1, 1982 through May 4, 1988, and continuous physical presence in the U.S. from November 6, 1986 through May 4, 1988.

The applicant responded by submitting an additional statement and an affidavit from her husband.

On June 21, 2007, the director denied the application because the applicant had failed to establish her continuous unlawful presence during the required period.

On appeal the applicant asks that CIS reconsider her application.

The record of proceeding contains no primary evidence, and consists entirely of affidavits from acquaintances.

Relevant to the period in question the record contains the following evidence:

- (1) Statement from [REDACTED] asserting he has known the applicant since 1981.
- (2) Statement from [REDACTED] asserting he is the husband of the applicant and that she has resided in the United States since 1981.
- (3) Statement from [REDACTED] asserting he has known the applicant since 1981.
- (4) Statement from [REDACTED] asserting the applicant lived with him from April 1981 to July 1983.
- (5) Statement from [REDACTED] asserting the applicant lived with him from 1984 to the present (1991).

As stated above, the inference to be drawn from the documentation provided shall depend on the *extent* of the documentation. The minimal evidence furnished cannot be considered extensive, and in such cases a negative inference regarding the claim may be made as stated in 8 C.F.R. § 245a.12(e).

As noted by the director there is a lack of any primary evidence, and the applicants entire body of evidence consists of a few, undetailed affidavits. There is little actual detail in the record about important qualifying criteria, such as how the applicant managed to travel abroad and return with a fake passport, the exact date and manner of entry, the applicants whereabouts and activities during the required period. As an example, the applicant asserted that she arrived in 1981, and yet during an interview asserted that she was married in Pakistan by phone. It is not clear why this would be necessary if she were present in the United States, and why she would not be residing with her husband. During an interview the applicant stated she could not remember her

age when she entered the United States, and yet has provided a birth certificate with a date of birth and asserts that she entered the United States in April 1981.

Assertions of the affiants appear minimal in their detail and contextually isolated. For example, the statement from at No. 4 above states simply that the applicant lived with him for three years, and nothing further. When viewed in its totality the record of proceeding does not give a clear picture of the applicant's life and activities during the required period such that her assertions of residence and presence are believable. Without this context CIS cannot determine with any confidence that the applicant was indeed continuously present and residing in the United States.

Documents which generically assert an affiant has known an applicant since a particular year are not sufficiently probative to support assertions of eligibility. In this case the documents are generic in nature and fail to fully explain how the affiants came to know the applicant and what the nature of the relationships were. As an example, the statements at No. 1 and 3 above refer to the applicant as a male, undermining the assertion that they actually know the applicant, a female. The documents and affidavits submitted are internally inconsistent, generic in nature, and lack credibility.

Given the lack of evidence, the noted inconsistencies, and the lack of detail when examining the record in its totality, the assertions of the applicant are not sufficiently probative or credible to meet her burden of establishing eligibility. Accordingly, the applicant has not established eligibility and the appeal will be dismissed.

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