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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 03 165 60630

Office: NEW YORK

Date:

OCT 31 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 Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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

On appeal, counsel states that the applicant does not have all of the evidence requested and asserts that the applicant has submitted sufficient evidence to establish her eligibility for LIFE Legalization. Counsel does not submit additional evidence on appeal.

Section 1104(c)(2)(B) of the LIFE Act states:

(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 (INA) 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 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 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.

In the Notice of Intent to Deny (NOID), dated July 29, 2005, the director stated that the applicant failed to submit sufficient evidence demonstrating her continuous unlawful residence in the United States throughout the requisite period. The director noted that the applicant submitted evidence from after 1985, however, no evidence was submitted for the period prior to 1985. The director also noted that the applicant had an absence in 1988 that exceeded 45 days, and that the applicant had been issued a G-visa in Chile although she claimed she was residing in the United States. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated July 18, 2007, the director denied the instant application based on the reasons stated in the NOID. The director noted that the applicant responded to the NOID, but did not submit additional evidence.

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 during the requisite period. The AAO has reviewed the entire record. The applicant submitted a letter of employment, receipts and statements as evidence to support her Form I-485 application. Here, the submitted evidence is not relevant, probative, and credible.

The applicant submitted a letter of employment from [REDACTED] Counsellor of Embassy, Permanent Mission of Chile to U.N, dated January 14, 1985, addressed to Citibank, N.A., New York, confirming that the applicant was employed as a housekeeper at his residence in New York City. The letter, however, is not probative as there is no indication when the employment commenced.

In addition, the applicant submitted the following:

1. A copy of a passbook from The Broadway National Bank of Chelsea showing deposits beginning on July 13, 1987, September 1987, October 1987, and January 4, 1988; and, a withdrawal on January 4, 1987.

2. A copy of a bank check, dated September 11, 1987, payable to the order of Metropolitan Hospital Center issued on behalf of the applicant by The Boston Five Cents Savings Bank FSB.
3. A Statement of Account from Metropolitan Hospital Center, New York, dated June 17, 1987.
4. Four Outpatient bills from Metropolitan Hospital Center, New York, dated in 1986.
5. An application receipt, dated January 1986, from a Social Security office in New York, N.Y.

The applicant has failed to provide sufficient evidence of her continuous residence throughout the requisite period. Specifically, the applicant failed to submit evidence for the period prior to 1985. Also, there is no evidence for the period from January 9, 1988. As noted by the director, the applicant cannot establish her continuous residence in the United States from prior to January 1, 1982 as CIS records reflect that the applicant was admitted into the United States at New York City, on September 9, 1985, with a G-5 visa. CIS records also reflect that the applicant departed the United States on January 1, 1988 for Chile, and returned on July 16, 1989, when she was again admitted at New York City, with a G-5 visa. These discrepancies cast doubt on whether the applicant's claim that she had resided in the United States before January 1, 1982, and resided continuously in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988, is true. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and 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 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that she continuously resided in the United States in an unlawful status during the requisite period.

The regulation at 8 C.F.R. § 245a.15(c)(1) provides that 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.

The applicant cannot establish that she resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as the applicant had exceeded the forty-five (45) day limit for a single absence and the aggregate of all absences of one hundred and eighty (180) days from the United States during this period, as set forth in 8 C.F.R. § 245a.15(c)(1)(i).

As noted above, the CIS records reflect that the applicant departed the United States on January 9, 1988 and did not return until July 16, 1989 (an absence of over 18 months). The applicant has failed to provide any evidence that the absence was due to emergent reasons. In addition, the director raised the issue of the applicant's prolonged absence in the NOID; however, counsel does not address the issue in his response to the NOID, or, on appeal. The applicant has failed to provide any documentation that her prolonged absence, exceeding 180 days, was due to emergent reasons, or that her return to the United States could not be accomplished within the time period allowed.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, she is 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.