



U.S. Citizenship
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Services

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FILE:

Office: NEW YORK

Date: **SEP 03 2008**

MSC 02 120 62539

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: SELF-REPRESENTED

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.

for Robert P. Wienham, 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, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district 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, the applicant asserts that the director erred in denying her eligibility for adjustment of status filed under the LIFE Act and states that she has been living in the United States since 1981. The applicant does not submit additional evidence on appeal.

Although a Form G-28, Notice of Entry of Appearance as Attorney or Representative, has been submitted, the individual named is not authorized under 8 C.F.R. § 292.1 or 292.2 to represent the applicant. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant.

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 April 19, 2002, the director stated that the applicant failed to submit sufficient evidence demonstrating her continuous unlawful residence in the United States during the requisite period. The director noted various discrepancies in the documentation submitted by the applicant, including evidence of a money transfer to the applicant in Colombia, on January 2, 1982. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated May 25, 2007, the director denied the instant application based on the reasons stated in the NOID. The director noted that the applicant failed to respond to the NOID. As also noted above, the applicant does not submit additional evidence on appeal.

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 record reflects that the applicant submitted letters of employment and affidavits as evidence to support her Form I-485 application. The AAO has considered the entire record. Here, the submitted evidence is not relevant, probative, and credible.

Employment Letters

The applicant submitted three letters of employment. The first is an undated letter, from [REDACTED] [REDACTED] stating that the applicant was employed since 1983 as a housekeeper. The letter, however, is not probative as it is undated, and it cannot be determined for what period the applicant was employed.

The second letter of employment is from [REDACTED], dated March 28, 1990. Ms. [REDACTED] states that the applicant has been employed as a housekeeper (once a week) since April 1981.

The third letter of employment is from [REDACTED] dated March 28, 1990, and states that the applicant has been employed as a housekeeper (twice a week) since March 1981.

Pursuant to 8 C.F.R. § 245a.2(d)(3)(i), letters from employers should be on employer letterhead stationery. The letters of employment failed to provide the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the affiants also failed to 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.

Affidavits and Letters

The applicant submitted the following evidence:

1. Form affidavits from [REDACTED] and [REDACTED], stating that they have known the applicant to have resided in the United States since 1981. These affidavits, however, are not probative as they are not dated, and are not notarized.
2. Form affidavits from [REDACTED] and [REDACTED], notarized in April, 1990. The affiants state that they have known the applicant to have resided in the United States since 1981. These affiants, however, do not state how they dated their acquaintance with the applicant, and whether or how they maintained a relationship with the applicant.
3. A notarized letter from [REDACTED] dated April 3, 1990, stating that the applicant lived at her house, located at [REDACTED], Jackson Heights, New York 11372, from February 1981 to August 1989, and paid \$300 monthly rent.

In addition, the applicant submitted a copy of a note on a prescription form from [REDACTED] M.D., dated April 19, 1990, stating that the applicant has been his patient since August 1983. Dr. [REDACTED] however, does not state whether or how often he had contact with the applicant or whether she has been a continuous resident since that time.

The applicant has submitted questionable documentation. The applicant claims that she has resided continuously in the United States since February 1981, and has submitted letters and affidavits attesting to her residence since 1981. However, as noted by the director, the record reflects that the applicant submitted a money transfer receipt, dated January 2, 1982, issued to the applicant in Colombia. It is noted that the director pointed out the inconsistency in the NOID, however, the applicant failed to respond to the NOID, and does not address the matter on appeal. It is noted that on her Form I-687, the applicant states that she first entered the United States on February 12, 1981,

and that she traveled to Colombia in April 1987, and in July 1987, and there is no indication that the applicant departed the United States prior to 1987 after her claimed first entry in 1981. This discrepancy puts into question whether the applicant has resided in the United States since 1981 as she claims.

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.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Also, as indicated above, these letters and affidants are either not reliable, lack sufficient details, or are not probative. The applicant has failed to provide any reliable documentation to establish her claimed entry into the United States and her continuous residence throughout the requisite period. Pursuant to 8 C.F.R. § 245a.2(d)(5), 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 upon documents with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States during the requisite period.

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.