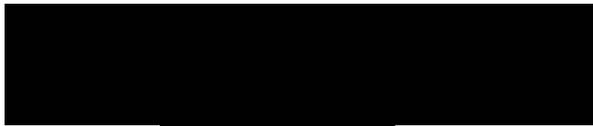


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U.S. Citizenship
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Services

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FILE: MSC 02 232 63698 Office: NEW YORK Date:

SEP 26 2008

IN RE: Applicant: A [Redacted]

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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: On May 26, 2007, the District Director, New York, 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 that the record reflects that the applicant departed the United States on August 18, 1986, and returned on December 21, 1986. The director concluded that this represents a clear break in residency as it exceeds a single absence of 45 days or less. The director also noted that the applicant's testimony on January 12, 1990, that her first and only entry into the United States was in 1986 contradicted her signed affidavit and other information she submitted.

Counsel for the applicant asserts that director did not properly consider the evidence the applicant submitted and submits additional documentation.

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.

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 record reflects that on May 20, 2002, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On March 29, 2004, the applicant appeared for an interview based on the application.

The record of proceeding contains the following evidence relating to the requisite period:

Letters and Affidavits

- A letter dated June 2007 from [REDACTED] a dentist from New Hyde Park, New York. [REDACTED] asserts that he is a U.S. citizen and provides his date of birth and current address. He states that he has known the applicant since 1984 but does not indicate where or under what circumstances he first met her. He does not explain how he recalls that it was 1984 when he first met the applicant. Although he states that that he has been in constant touch with her, he provides minimal details about the applicant's places of residence and the circumstances of her residence over the past 25 years. Lacking relevant details, this letter has minimal probative value and can be given minimal weight as evidence of the applicant's continuous residence in the United States during the statutory period;
- Two identical letters from [REDACTED], dated June 2007. [REDACTED] indicates that he met the applicant in December 1982 at a social gathering. He states that it was a pleasure to see her since they were from the same city and community. He states that he and his family have kept in touch with her since

then. He states that they see each other at their temple and religious festivals. Although he states that he has known the applicant since 1982 and kept in touch with her, [REDACTED] provides minimal details about the applicant's places of residence and circumstances of her residence over the past 25 years. Therefore, minimal weight can be given to this letter as it fails to provide sufficient details about the circumstances of the applicant's residence in the United States during the requisite period; and,

- A letter dated March 26, 2004, from [REDACTED] provides her current address and telephone number and states that she has known the applicant since early 1984, when they met at a religious gathering. She states that she has known her for the past 18 years and found her to be a friendly person. She states that they share the same values about life in general. She states that they have become family friends and often visit each other at home. Although the affiant claims to have known the applicant for almost 25 years, she fails to indicate any knowledge of the applicant's travel to or entry into the United States or the circumstances regarding the applicant's residence in the United States. She does not indicate exactly when she met the applicant, how she recalls that it was in 1984, or even which religious gathering they met at. Lacking such relevant detail, the affidavit can be afforded only minimal weight as evidence of the applicant's residence in the United States for the requisite period.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period. Furthermore, while the applicant has submitted numerous affidavits in support of her application, she has not provided any contemporaneous evidence of residence in the United States during the duration of the requisite period. 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.

The record of proceedings contains other documents, including A letter dated March 27, 2004, from [REDACTED] asserting that he has known the applicant for over 12 years; a letter dated March 27, 2004, from [REDACTED] stating that he has known the applicant for 10 years; a letter from [REDACTED] stating that he met the applicant over 10 years ago; tax and employment records from 1988. All of this evidence is dated after the requisite period and does not address the applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988.

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 without inspection through Canada on April 14, 1981, and to have resided for the duration of the requisite period in Florida and 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.

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.