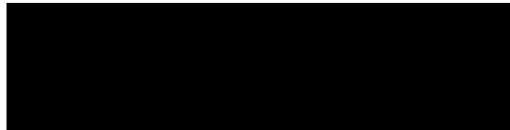




U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]
MSC 01 292 60253

Office: LOS ANGELES

Date: **JAN 12 2007**

IN RE: Applicant: [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:

SELF-REPRESENTED

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 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.

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, Los Angeles, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The director denied the application because the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. In particular, the director noted that the applicant had submitted documentation of residency in response to a Form I-72 request for evidence, but stated that the evidence "submitted did not overcome the grounds of ineligibility."

On appeal, the applicant contends that she has submitted sufficient evidence of residency and requests that the director's decision be reexamined.

8 C.F.R. § 245a.20(a)(2) requires that when an adverse decision is proposed, an applicant for LIFE legalization must be notified of the intention to deny the application and the basis for the proposed denial, and granted a period of 30 days to respond to this notice.

Here, the applicant was issued a decision, but the record lacks evidence that the director notified the applicant of the intention to deny the application and the basis for the proposed denial. The record shows that the applicant was issued a Form I-72 request for evidence on April 1, 2003 in which she was requested to provide proof of her residence in the United States for the years 1981 through 1988. This request states that "failure to submit the requested documentation within 90 days may be grounds to deny your life application for adjustment of status due to lack of prosecution."

This notice was not sufficient to meet the requirements of 8 C.F.R. § 245a.20(a)(2). The Form I-72 request informed the applicant that her application could be denied for failure to prosecute if she did not respond, but it did not inform her that the director intended to deny her application for the reasons later enumerated in the decision. Furthermore, neither the Form I-72 request nor the director's decision note any particular deficiencies in the evidence submitted by the applicant, or explain why the evidence in the record was insufficient to meet the applicant's burden of proof. Therefore, the director's decision must be withdrawn.

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).

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.

Although Citizenship and Immigration Services (CIS) 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The record indicates that the applicant entered the United States in March 1981 as a 15-year-old girl. From 1981 through 1988, the applicant worked as a live-in domestic employee for [REDACTED] of Los Angeles, California. The record contains an affidavit from [REDACTED] attesting to the applicant’s employment. The affidavit contains sufficient information to meet the requirements for employment verification letters listed at 8 C.F.R. § 245a.2(d)(3)(i), and is amenable to verification. The applicant has also submitted other third-party affidavits and receipts as evidence of residency in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. Viewed in its totality, the evidence in the record presents a consistent account of the applicant’s residency throughout this period.

The applicant has met her burden of proving continuous residence in an unlawful status in the United States from before January 1, 1982 through May 4, 1988. Accordingly, the applicant has established eligibility to adjust status to Legal Permanent Resident status under section 1104 of the LIFE Act.

ORDER: The appeal is sustained. The application is returned to the director for adjudication consistent with the foregoing.