

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

LC

PUBLIC COPY



FILE:

MSC 02 246 66213

Office: LOS ANGELES

Date: **MAR 29 2007**

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. 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 dismissed.

The district 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.

On appeal, the applicant asserts that she has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988 and resolving the inconsistencies noted by the director in the Notice of Intent to Deny (NOID).

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 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 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).

While there is no specific regulation which governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements which affidavits are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information which an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to. See 8 C.F.R. § 245a.2(d)(3)(v).

Here, the submitted evidence is not sufficiently relevant, probative, and credible.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence throughout the application process:

- An affidavit notarized on May 15, 2002 from [REDACTED] attesting that the applicant resided as his tenant at [REDACTED] California from 1988 to 1990.
- An affidavit notarized on May 15, 2002 from [REDACTED] stating that he has known the applicant resided in the United States since he met her in 1984.
- An affidavit notarized on May 13, 2002 from [REDACTED] stating that she has known the applicant for 40 years and knows that the applicant has lived in the United States for more than 20 years.
- An affidavit notarized on May 13, 2002 from [REDACTED] the applicant's aunt, attesting that the applicant resided at her home at [REDACTED], California from 1981 to 1987.
- An affidavit notarized on May 1, 2002 from [REDACTED] the applicant's friend, stating that the applicant has resided in the United States since 1982.
- An affidavit notarized on October 4, 1989 from [REDACTED] of [REDACTED] [REDACTED] attesting that the applicant was employed as her housekeeper and in child care from June 15, 1987 to May 30, 1989 and was paid \$70 plus room and board per week.
- An affidavit notarized on September 29, 1989 from [REDACTED] a personal acquaintance, stating that she knows that the applicant has worked under the name [REDACTED]

- An affidavit notarized on September 29, 1989 from [REDACTED] attesting that the applicant resided at [REDACTED] in Pico Rivera, California from February 1981 to March 1987 and [REDACTED] from April 1987 to that date.
- An affidavit notarized on September 22, 1989 from [REDACTED] attesting that the applicant resided at [REDACTED] from February 1981 to March 1987 and [REDACTED] April 1987 to that date.
- An affidavit notarized on September 15, 1989 from [REDACTED] residing at [REDACTED] California stating that she employed the applicant as a housekeeper and in child care from March 15, 1981 to February 28, 1987 and paid the applicant \$80 plus room and board per week.
- Pay stubs from the Rio Hondo Hospital dated in 1989 and 1990 showing payment to an individual named [REDACTED] and to the applicant under the same social security number.
- Rent receipts dated in 1988 indicating that the applicant paid rent for the residence at [REDACTED] Pico Rivera, California.
- Pay stubs from The [REDACTED] California bearing the name [REDACTED].
- A receipt dated March 12, 1985 from [REDACTED] issued to an individual named [REDACTED] with an apparent address of [REDACTED].
- A postal receipt postmarked in June 1983 bearing the applicant's name as sender with an apparent address on [REDACTED].
- A postal receipt postmarked on October 6, 1983 bearing the applicant's name as recipient with an apparent address of [REDACTED] California.
- Postmarked envelopes (postmark illegible) bearing the applicant's name and the addresses [REDACTED] California.

On January 12, 2004, the director issued a Notice of Intent to Deny (NOID) stating that the evidence submitted by the applicant was not credible. The director observed that [REDACTED] stated in their affidavits that the applicant resided at [REDACTED] California from February 1981 to March 1987, but the applicant indicated in her Form I-687 application that she resided at [REDACTED] from February 1981 to the date of that application. The director also noted that the applicant had submitted pay stubs bearing a different name than her own, but had failed to prove that she used that name as an alias.

In response to the NOID, the applicant submitted a statement dated February 17, 2004 in which she asserted that she worked at [REDACTED] but never resided there. The applicant stated that

she resided at [REDACTED] from 1981 to December 1988 and [REDACTED] in Pico Rivera from 1988 to late 1990. The applicant submitted handwritten receipts as evidence that she resided at the latter address. The applicant asserted that the affidavits from Mr. [REDACTED] and [REDACTED] "are not very specific and they tend to lead the reader to understand that I lived on the addresses contained therein."

In the decision to deny the application dated October 13, 2004, the director stated that "the information [the applicant] submitted . . . failed to overcome all the grounds for denial as stated in the NOID," and denied the application.

On appeal, the applicant further explains that the addresses [REDACTED] are "within point one (.1) miles of each other." The applicant submits maps to support this claim. The applicant contends that she worked as a housekeeper and babysitter at [REDACTED] and often stayed at that home overnight, but considered her aunt's house at [REDACTED] her actual place of residence. The applicant asserts that [REDACTED] saw her at the house of her employer and assumed it was her residence. The applicant reasserts that she worked under the alias [REDACTED] and submits receipts from the Rio Hondo Hospital, some bearing her name and others the name [REDACTED], both with same employee and Social Security number.

Upon review of all the evidence in the record, the AAO determines that the submitted evidence is not sufficiently relevant, probative, and credible to meet the applicant's burden of proof.

The evidence submitted by the applicant shows at least seven different addresses used by the applicant as her residence between January 1, 1982 and May 4, 1989. The applicant indicated on her Form I-687 that she resided at [REDACTED] California during the entire period. The applicant has provided an explanation for why the information in the affidavits from [REDACTED] and [REDACTED] is inconsistent with the information in her Form I-687, but she has submitted no additional evidence from either [REDACTED] to corroborate this explanation. On appeal the applicant indicates that she "never really discussed living down the street with my Aunt" with Mr. [REDACTED]-yet [REDACTED] does indicate in his affidavit, as does [REDACTED] in her affidavit, that the applicant lived at the [REDACTED]. (the residence of the applicant's aunt) from April 1987 to the date they each signed their affidavits in September 1989.

In addition, the applicant has failed to explain why [REDACTED] state that the applicant lived at [REDACTED] from 1987 to 1989, as the applicant herself indicated on her Form I-687, but other evidence—particularly the applicant's statement in response to the NOID, the affidavit from her landlord [REDACTED] and rental receipts—show that the applicant resided at [REDACTED] Ave. during that period. The applicant's explanation that any confusion concerning her place of residence from 1981 to 1987 stems from the fact that she was a housekeeper at [REDACTED] Ave. during that time cannot be applied to the inconsistencies concerning her place of residence from 1987 to 1989, as she did not work at either [REDACTED] or [REDACTED] during that period. Indeed, the applicant indicates on her Form I-687 that she worked and received room and board at the home of [REDACTED] in Los Angeles, California during this period, an assertion supported by the affidavit from [REDACTED]. The other affidavits submitted by

the applicant do not list addresses for the applicant and lack detail concerning the applicant's residences during the qualifying period.

Finally, the postal receipts and the receipt from [REDACTED] each list a different address in Cudahy, California for the applicant. The applicant has not indicated that she ever resided at any of these addresses and provides no explanation for this discrepancy.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

As the applicant herself has submitted conflicting statements as to her residences, it is reasonable to expect her to explain why she has submitted the contradictory information and adequately resolve the contradictions through credible evidence. Likewise, it is reasonable to expect the applicant to submit explanations from affiants providing testimony that contradicts other evidence she has submitted. As discussed above, the applicant has provided no additional evidence from the affiants who provided testimony in their affidavits that contradicts with the applicant's own accounts and other evidence in the record. It is not sufficient for the applicant merely to provide her personal speculation as to why the affiants submitted the contradictory information. When the receipts bearing addresses for the applicant in Cudahy are also considered, significant doubts remain as to the applicant's residences in spite of the applicant's explanations. Furthermore, these discrepancies raise questions about the authenticity of the remaining documents the applicant has presented in attempt to continuous residence in the United States prior to January 1, 1982 through May 4, 1988.

The regulation at 8 C.F.R. § 245a.12(e) provides that "[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods." Preponderance of the evidence is defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5th ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

Given the contradictions in the evidence, the AAO determines that the applicant has not met her burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982, and resided in this country in an unlawful status continuously since that time through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b).

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