

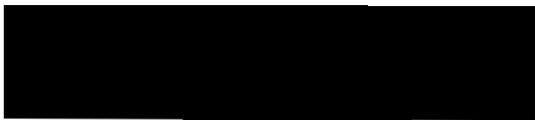
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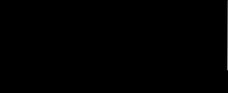
U.S. Citizenship
and Immigration
Services

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FILE:



Office: GARDEN CITY

Date:

DEC 24 2008

MSC 01 313 60104

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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, Garden City, 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, the applicant states that she has submitted sufficient evidence to establish her continuous residence, and that the director erred in not giving adequate weight to the evidence.

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).

In the Notice of Intent to Deny (NOID), dated July 8, 2007, 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 that there were inconsistencies in the applicant's testimony, and the affidavits provided were unverifiable. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated February 4, 2006, the director noted that the applicant responded to the NOID, but that her response failed to overcome the reasons for denial as stated in the NOID.

On appeal, the applicant reasserts that she has submitted sufficient evidence in the form of affidavits and detailed testimony at her interview to establish her entry and her continuous residence. 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. In an attempt to establish continuous unlawful residence in the United States during the requisite period since prior to January 1, 1982, the applicant submits letters, affidavits, and school records as evidence to support her Form I-485 application. The AAO has reviewed the entire record. Here, the submitted evidence is not relevant, probative, and credible.

The applicant submitted the following affidavits:

1. An affidavit from [REDACTED], sworn to on July 31, 2001, stating that she has known the applicant to have resided in the United States since November 1981. Ms. [REDACTED] attests that she was introduced to the applicant at a gathering in the Bronx, and that since then she and the applicant have been close friends. [REDACTED] however, does not indicate how she maintained a relationship with the applicant and how frequently she had contact with the applicant. The affiant indicates that during the period starting in 1981, she had not seen the applicant for five months, but she does not specify when that five-month period began or ended.
2. An affidavit from [REDACTED] sworn to on July 31, 2001, stating that he has known the applicant to have resided in the United States since December 1981. [REDACTED] attests that he first met the applicant at a subway station. [REDACTED] however, does not indicate whether and how he maintained a relationship with the applicant and how frequently he had contact with the applicant. The affiant indicates that since December 1981 the longest period he had not seen the applicant is fifteen months, but he does not specify when that fifteen-month period began or ended.
3. Affidavits from [REDACTED] and [REDACTED], sworn to in 1993. Each affiant states

that he has known the applicant to have resided in the United States since 1981. The affiants, however, do not indicate how they dated their acquaintance with the affiant, whether they maintained a relationship with the applicant or how frequently they had contact with the applicant.

It is also noted that the record reflects that the applicant, who was born in 1967, and who claims that she has been residing in the United States since 1981, was only 14 years old when she entered the country. However, the applicant does not submit any school records nor does she provide an explanation as to why she is unable to provide such records. In addition, the applicant does not provide any supporting documentation as to how she was able to make contributions toward rent or household expenses at such a young age. As the applicant was only 14 years old in 1981, she would have had to have been provided for and cared for by an adult. Yet, no such documentation was provided.

These discrepancies cast considerable doubt on whether the applicant 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.

The applicant has not provided any reliable evidence of 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. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of her claim. 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 from prior to January 1, 1982, through May 4, 1988.

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.