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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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PUBLIC COPY

[REDACTED]

FILE:

[REDACTED]
MSC 02 289 60314

Office: CHICAGO

Date:

JAN 23 2008

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:

[REDACTED]

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.

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, Chicago, 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 had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

On appeal, counsel contends that the applicant did provide documentation, including affidavits, which established her continuous unlawful residence during the requisite period. Counsel asserts that the director did not follow internal policy and did not give proper weight to the evidence submitted with the application.

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 (Act) 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 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 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 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 since before January 1, 1982, through May 4, 1988. Here, the submitted evidence is not sufficient.

In the March 9, 2004, Notice of Intent to Deny (NOID), the director stated that the evidence submitted by the applicant failed to establish her continuous unlawful presence in the United States from before January 1, 1982, through 1986. The director stated that there was no primary or secondary evidence to establish her claim. Although the director incorrectly applied the regulation at 8 C.F.R. § 103.2(b) to the instant application, it is harmless error because the AAO conducts a de novo review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.12(f). The director granted the applicant thirty (30) days to submit a rebuttal or additional evidence. The record reflects that neither a rebuttal nor additional evidence was received.

In the February 23, 2005, Notice of Decision (NOD), the director denied the instant application based on the reasons stated in the NOID. In addition, the director determined that the applicant was inadmissible to the United States under Section 212(a) (6)(C) of the Act. The director stated that the applicant's passport contained a fraudulent Indian Immigration Departure Stamp dated August 2, 1981, five years before the passport was issued.

On appeal, counsel contends that the applicant provided documentation, including affidavits, in support of her application. Counsel contends that the director violated internal policies and is required to accept affidavits as evidence of continuance residence in the United States. Counsel cites an Immigration and Nationality Services (now Department of Homeland Security or DHS) internal agency document.¹

In support of her application, the applicant submitted a photocopy of her passport, which contains a B1/B2 visa issued on December 12, 1986. The passport also contains an admittance stamp to the United States, dated February 9, 1987. The applicant also submitted a certificate of deposit in her name, issued on February 16, 1988. The applicant also submitted several affidavits certifying that she resided in the United States from 1987 to 1989. Based on the above evidence, it is evident that the applicant resided in the United States from 1987 to 1989.

¹ 66 No. 12 Interpreter Releases 347, Appendix I, 358-360 (March 27, 1989).

It is not evident that the applicant resided in the United States for the period before January 1, 1982, through 1986. The photocopy of the applicant's passport indicates that it was issued on July 18, 1986. On page 6 of the passport, there is a departure stamp from India Gandhi International Airport with an illegible date stamp. Over the illegible date stamp is the hand-written date August 2, 1981. The hand-written date appears to be fraudulent as it was dated approximately five years before the passport was issued. This discrepancy seriously casts doubt on the credibility of the applicant.

The record also contains a December 28, 1989, affidavit by the applicant. The applicant declared, under penalty of perjury, that she first entered the United States in March 1981. However, to meet her burden of proof, the applicant must provide evidence of eligibility apart from her own testimony. 8 C.F.R. § 245a.2(d)(6).

The record contains two notarized statements by [REDACTED] and [REDACTED], and [REDACTED] and [REDACTED], dated December 28, 1989 and December 27, 1989, respectively. Both [REDACTED] and [REDACTED] certified that the applicant resided in their home from 1981 to 1987. Both [REDACTED] and [REDACTED] stated that they have been acquainted with the applicant since she came to the United States in 1981. Although not required, none of the affidavits included any supporting documentation of the affiant's identity or presence in the United States. The absence of sufficiently detailed affidavits to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of her claim.

The applicant has failed to provide relevant, probative, and credible evidence of her residence in the United States prior to January 1, 1982, and continuous unlawful residence through 1986. 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.

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