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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

L2

**PUBLIC COPY**

[REDACTED]

FILE:

MSC 02 008 62205

Office: HOUSTON

Date: NOV 02 2006

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. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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, Houston, Texas, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant had not demonstrated that she met any of the eligibility requirements of the LIFE Act.

On appeal, counsel asserts that the applicant meets the citizenship skills requirement because at the time of her interview, she was studying English at "an institution." Counsel resubmitted a copy of a letter from Mission Greenspoint; however, counsel did not address the other grounds for denial in the director's decision and submitted no additional documentation to overcome them.

The director's decision is based on the applicant's failure to overcome the grounds for denial of the application as outlined in the Notice of Intent to Deny (NOID). As on appeal, the applicant failed to address all of the grounds that the director set forth in the NOID. However, we note that the NOID is overly broad, merely stating that as the applicant did not understand sufficient English to continue with the interviews, she failed to demonstrate that she met any of the regulatory requirements. The record, however, does not indicate that the applicant is inadmissible into the United States on any of the enumerated grounds. We therefore withdraw this ground for the director's denial of the application.

The record reflects that the applicant filed a new Form I-687, Application for Status as a Temporary Resident Under Section 245A of Immigration and Nationality Act, on February 10, 2005 (MSC 05 133 11318). The record does not indicate that this application has been finally adjudicated, and it is not an issue in this decision.

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. Section 1104(c)(2)(B) of the LIFE Act; 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 applicant stated on the questionnaire to determine class membership, which she signed under penalty of perjury on April 26, 1994, that she first entered the United States in March 1981. On her Form I-687, Application for Status as a Temporary Resident, which she also signed under penalty of perjury on April 26, 1994, the applicant stated that her only absence from the United States since entry was a visit to Mexico from November to December 1987 on a family emergency.

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

1. A March 31, 1994 sworn statement from [REDACTED] in which she stated that she has known the applicant since 1981, and that the applicant "occasionally" cared for her child. The applicant submitted no documentation to verify that [REDACTED] was present and living in the United States during the required period, and no evidence to verify her work for [REDACTED].
2. A March 30, 1994 sworn statement from [REDACTED] in which she stated that she met the applicant in 1981 when she performed childcare services for [REDACTED] and that in 1982, she hired the applicant to care for her invalid aunt. The applicant submitted no documentation to establish that Ms. [REDACTED] was present and living in the United States during the relevant time and submitted no documentation to verify her employment with [REDACTED].
3. A March 29, 1994 affidavit from [REDACTED] in which he stated that he has known the applicant for about 20 years, first meeting her in Mexico and that she came to the United States in 1981.
4. A March 29, 1994 sworn statement from [REDACTED] in which he stated that he knew the applicant as a child in Mexico, and can certify that she came to the United States in April 1981.
5. An April 4, 1994 sworn statement from [REDACTED] in which she stated that she has known the applicant since late 1981 "here in the United States, in the City of Houston," and that the applicant was her neighbor until 1985.
6. A January 16, 2003 notarized statement from [REDACTED] in which she stated that she has been a friend of the applicant's since 1982. [REDACTED] does not state the circumstances of her initial acquaintance with the applicant or that their acquaintance originated and was maintained in the United States.
7. An August 5, 2000 sworn statement from [REDACTED] in which he stated that he and the applicant traveled together to Guadalajara, Mexico in November 1987 to visit her sick father (his uncle). Mr. [REDACTED] did not state where the trip originated.

The applicant also submitted a copy of a letter from ISS Cleaning Services Group, Inc., addressed to "ISS Employee" and commemorating a "milestone anniversary." The letter is not dated, refers to no specific employee and does not indicate the anniversary year it is commemorating. A handwritten note has the applicant's name, social security number, a date of July 22, 1991 and "5 yrs" with a circle around it. That would imply that the company employed the applicant in 1987. However, on her Form I-687 application, dated April 26, 1994, the applicant stated that she had been employed as a "domestic housekeeper" for "various employers" from 1981 until "present." Further, on her Form G-325, Biographic Information, which she signed under penalty of perjury on September 21, 2001, the applicant stated that she had worked for ISS from 1996 until 1999.

Additionally, the applicant claimed to have been out of the United States only once during the qualifying period, for a period of approximately one month in 1987. However, on her Form I-485, Application to Register Permanent Residence or Adjust Status, the applicant stated that she had given birth to two children in Mexico, one in November 1984 and the other in August 1986. The applicant failed to recognize these children when she filed her Form I-687 in 1994. The applicant's failure to provide complete and accurate information about her presence outside of the United States raises questions as to her credibility. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The applicant has submitted seven affidavits and sworn statements attesting to her continuous residence in the U.S. during the period in question. While affidavits in certain cases can effectively meet the preponderance of evidence standard, the applicant's documentation of her continued residency in the United States is limited to relatives and friends. The applicant submitted no objective or contemporaneous evidence of her presence and residence in the United States. Although she stated that she worked for various employers during the qualifying period, the applicant submitted only minimum evidence of employment during 1981 and 1982. The record contains no objective verification of the applicant's continuous residency during the requisite period.

Accordingly, it is concluded that the applicant has failed to establish continuous residence in the U.S. for the required period.

The director also denied the application because the applicant failed to establish that she satisfied the "basic citizenship skills" required under section 1104(c)(2)(E) of the LIFE Act.

Under section 1104(c)(2)(E)(i) of the LIFE Act ("Basic Citizenship Skills"), an applicant for permanent resident status must demonstrate that he or she:

- (I) meets the requirements of section 312(a) of the Immigration and Nationality Act (8 U.S.C. § 1423(a)) (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States); or
- (II) is satisfactorily pursuing a course of study (recognized by the Attorney General) to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

Under section 1104(c)(2)(E)(ii) of the LIFE Act, the Attorney General may waive all or part of the above requirements for aliens who are at least 65 years of age or developmentally disabled.

The applicant, who was 43 years old at the time she took the basic citizenship skills test and provided no evidence to establish that she was developmentally disabled, does not qualify for either of the exceptions in

section 1104(c)(2)(E)(ii) of the LIFE Act. Further the applicant does not satisfy the “basic citizenship skills” requirement of section 1104(c)(2)(E)(i)(I) of the LIFE Act because she does not meet the requirements of section 312(a) of the Immigration and Nationality Act (the Act). An applicant can demonstrate that he or she meets the requirements of section 312(a) of the Act by “[s]peaking and understanding English during the course of the interview for permanent resident status” and answering questions based on the subject matter of approved citizenship training materials, or “[b]y passing a standardized section 312 test . . . by the Legalization Assistance Board with the Educational Testing Service (ETS) or the California State Department of Education with the Comprehensive Adult Student Assessment System (CASAS).” 8 C.F.R. § 245a.3(b)(4)(iii)(A)(I) and (2).

The regulation at 8 C.F.R. § 245a.17(b) provides that an applicant who fails to pass the English literacy and/or the United States history and government tests at the time of the interview, shall be afforded a second opportunity after six months (or earlier at the request of the applicant) to pass the tests or submit evidence as described in paragraphs (a)(2) or (a)(3) of this section.

The record reflects that the applicant was interviewed twice in connection with her LIFE application, first on March 5, 2003 and again on April 19, 2004. On both occasions, the applicant failed to demonstrate a minimal understanding of English and minimal knowledge of United States history and government. Furthermore, the applicant has not provided evidence of having passed a standardized citizenship test, as permitted by 8 C.F.R. § 312.3(a)(1).

The applicant, however, could still meet the basic citizenship skills requirement under section 1104(c)(2)(E)(i)(II) of the LIFE Act, if she meets one of the criteria defined in 8 C.F.R. §§ 245a.17(a)(2) and (3). In part, an applicant must establish that he meets the following under 8 C.F.R. § 245a.17:

- (2) has a high school diploma or general educational development diploma (GED) from a school in the United States; or
- (3) has attended, or is attending, a state recognized, accredited learning institution in the United States, and that institution certifies such attendance. The course of study at such learning institution must be for a period of one academic year (or the equivalent thereof according to the standards of the learning institution) and the curriculum must include at least 40 hours of instruction in English and United States history and government.

The record does not reflect that the applicant has a high school diploma or a GED from a United States school, and therefore does not satisfy the regulatory requirement of 8 C.F.R. § 245a.17(2).

In response to the NOID, counsel stated that, at the time of her first interview on March 5, 2003, the applicant was attending an English course at Greenspoint and had completed 42 class hours. Counsel submitted a copy of an August 5, 2004 letter from Cindy Butler, an administrator with Mission Greenspoint, in which she verified that the applicant attended “English class from February until May of 2003,” and that she “completed 42 class hours during that time.”

The documentation from the Mission Greenspoint does not provide any confirmation that it is “a state recognized, accredited learning institution,” and has a course content that includes any instruction on United States history and government as required by 8 C.F.R. § 245a.17(a)(3). Furthermore, 8 C.F.R. § 245a.17(a)(3) requires that the applicant submit certification on letterhead stationery from a state recognized, accredited

learning institution either at the time of filing the Form I-485, subsequent to filing the application but prior to the interview, or at the time of the interview. In the instant case, documentation from a state recognized, accredited learning institution should have been submitted to Citizenship and Immigration Services prior to or at the time of the applicant's second interview on April 19, 2004. Assuming, arguendo, that Mission Greenspoint is a state recognized, accredited learning institution, the applicant still would not qualify for the benefit being sought as the documentation from Mission Greenspoint was presented subsequent to the applicant's interview and the documentation does not indicate that the course was for one academic year as required by 8 C.F.R. § 245a.17(a)(3).

The applicant also submitted a "certificate of completion" from the Houston Community College System, indicating that she completed "Special Topics in Communication ESL 1 COMG 1091" for 40 contact hours. As with the documentation from Missions Greenspoint, the documentation from the Houston Community College System fails to indicate that it falls within requirements of 8 C.F.R. § 245a.17(a)(3). Further, it was submitted subsequent to the applicant's second interview.

Therefore, the applicant does not satisfy either alternative of the "basic citizenship skills" requirement set forth in section 1104(c)(2)(E)(i) of the LIFE Act. Accordingly, the applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

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