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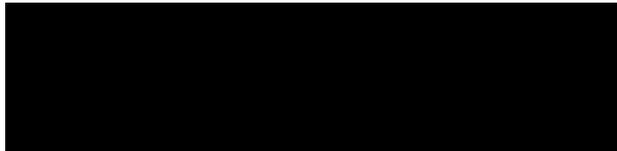
Office: LOS ANGELES

Date:

MAR 02 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. 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, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded for further action and consideration.

The district director denied the application because: 1) she determined that the applicant was likely to become a public charge as defined in 8 C.F.R. § 245a.18(c)(2)(vi); and 2) the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, the applicant submits a copy of her 1992 marriage certificate with English translation along with evidence of her husband's income since 1988.

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 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).

The regulation at 8 C.F.R. § 245a.18(a)(1) states in part that an alien who has been convicted of a felony or three or more misdemeanors committed in the United States is ineligible for adjustment to lawful permanent resident status.

"Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under the term "felony," pursuant to 8 C.F.R. § 245a.1(p). For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 245a.1(o).

The regulation in 8 C.F.R. § 245a.18(c)(2)(vi) states, in pertinent part, if a LIFE Legalization applicant is determined to be inadmissible under section 212(a)(4) of the Act, he or she may still be admissible under the Special Rule described under paragraph (d)(3) of this section. 8 C.F.R. § 245a.18(d) states:

- (1) In determining whether an alien is "likely to become a public charge", financial responsibility of the alien is to be established by examining the totality of the alien's circumstance at the time of his or her application for adjustment. The existence or absence of a particular factor should never be the sole criteria for determining if an alien is likely to become a public charge. The determination of financial responsibility should be a prospective evaluation based on the alien's age, health, family status, assets, resources, education and skills.
- (2) An alien who has a consistent employment history that shows the ability to support himself or herself even though his or her income may be below the poverty level is not excludable under paragraph (c)(2)(vi) of this section. The alien's employment history need not be continuous in that it is uninterrupted. In applying the Special Rule, the Service will take into account an alien's employment history in the United States to include, but not to be limited to, employment prior to and immediately following the enactment of IRCA on November 6, 1986. However, the Service will take into account that an alien may not have consistent employment history due to the fact that an eligible alien was in an unlawful status and was not authorized to work. Past acceptance of public cash assistance within a history of consistent employment will enter into this decision. The weight given in considering applicability of the public charge provisions will depend on many factors, but the length of time an applicant has received public assistance will constitute a significant factor. It is not necessary to file a waiver in order to apply the Special Rule for determination of public charge.
- (3) In order to establish that an alien is not admissible under paragraph (c)(2)(vi) of this section, an alien may file as much evidence available to him or her establishing that the alien is not likely to become a public charge. An alien may have filed on his or her behalf a Form I-134, Affidavit of Support. The failure to submit Form I-34 shall not constitute an adverse factor.

The applicant, on her Form I-687 application dated December 29, 1989, indicated that she had received public assistance from November 1984 to July 1986 and has been receiving said assistance since July 15, 1987. The applicant indicated on her Questionnaire to Determine Class Membership dated January 2, 1990 that the public assistance was for her two children.

The FBI report indicates that on October 10, 1998, the applicant was arrested by the Montebello Police Department for petty theft, a violation of section 484(a) PC.

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:

- Her son's August 14, 1984 and her daughter's May 25, 1986 birth certificates.
- An Affidavit to Amend a Record accepted by the Office of the State Registrar of Vital Statistics on January 18, 1985. The affidavit amended the son's and father's names from [REDACTED] to [REDACTED] and [REDACTED] to [REDACTED] respectively.
- Her son's immunization record which reflects vaccinations given in 1987 and 1988.
- A California identification card issued on November 19, 1984 and listed her address as [REDACTED], Stockton, California.
- An earnings statement for the period ending June 1, 1985 from Sunniland Fruit, Inc. in Stockton, California, which listed her address as [REDACTED], Stockton, California.
- Page one of a month to month rental agreement entered on August 5, 1985 for property located at [REDACTED], Stockton, California.
- Three PG&E utility bills addressed to the applicant at [REDACTED] for the periods September 3, 1985 to November 5, 1985.
- A PG&E utility bill addressed to the applicant at [REDACTED] Fresno, California for the period for August 10, 1987 to September 3, 1987.
- An earnings statement for the period ending June 30, 1987 from Mona, Inc., in Coachella, California.
- An earning statement dated November 27, 1987 from Mi-Rancho Tortillas, Inc., in Clovis, California.
- An earning statement dated September 19, 1987 from a farm in Selma, California.
- A Notice of Action dated September 30, 1987 from State of California Health and Welfare Agency for Fresno County addressed to the applicant at [REDACTED], Fresno, California.
- A letter dated February 12, 1988 from the Los Angeles County Community Development Commission addressed to the applicant at [REDACTED], Los Angeles, California.

The applicant also submitted two receipts dated October 30, 1985 addressed to Village East Apartments. However, the receipts have no probative value or evidentiary weight as the applicant's name was not listed on the receipts.

On May 30, 2003, the director issued a Form I-72, requesting that the applicant provide evidence of her residence in the United States from 1981 to 1983. The applicant was also requested to submit the court disposition for her 1998 arrest. The applicant, in response provided:

1. The court disposition for Case no. 8EL11440, which indicated that on November 10, 1998 the applicant was convicted of petty theft, a misdemeanor. The applicant was placed on probation for one year and ordered to pay a fine.
2. An affidavit notarized August 20, 2001 from a relative, [REDACTED] of Stockton, California, who attested to the applicant's 1980 arrival into the United States and her continuous residence in California since said date.
3. An affidavit notarized November 3, 2001 from an acquaintance, [REDACTED] of Los Angeles California, who attested to the applicant's Los Angeles residence at [REDACTED] from September 1980 to November 1982.

In a Notice of Intent to Deny issued on October 28, 2004, the director advised the applicant that she had an extensive history of receiving public assistance since 1984 and, therefore, did not have sufficient history of verifiable income. The director determined that the applicant may be likely to become a public charge. The applicant, in response, asserted, in part:

I came to the United States in 1980. Upon my arrival I lived in the city of Los Angeles. I lived there until 1982, while living in Los Angeles I worked as a babysitter. Then I moved to Stockton, California, there I worked as a babysitter, tomato machine operator, as a waitress, packaging, Lamp making operator, the filed as a packager. I worked and lived in Stockton until 1986.

During my time in Stockton I had my first son, [REDACTED] born 08/14/84, and my daughter, [REDACTED] born 5/25/1986. During my pregnancy and after I gave birth I continued to work and support my children, with the help of Public Assistance, since I did not have a husband, and I lived alone.

In 1986 I moved back to Los Angeles, I worked as a Lamp Maker, a waitress, and as a baby sitter. During this time I supported my children with the help on and off of Public Assistance.

Then in 1992 I married, so I stopped the help of Public Assistance. I have not worked since I got married, I am a housewife. My husband supports me financially and emotionally.

The director, in denying the application, noted that although the applicant stated that since her marriage in 1992, her spouse has supported her, the applicant did not provide any evidence of husband's income to establish this fact. In addition, the applicant did not list that she was married either on her LIFE application or her Form G-325A, Biographic Information.

On appeal, the applicant submits a copy her marriage certificate which indicates that she was married on October 21, 1992. The applicant also submitted copies of her spouse's Social Security Statement dated June 18, 2004, which reflects his earnings since 1988 and several earnings statements from Hancock Paark Convalescent Hospital in Los Angeles, California issued during 1992.

Pursuant to the Special Rule set forth in 8 C.F.R. § 245a.18(c)(2)(d)(3), the AAO concludes that the applicant has provided sufficient evidence to establish that she will not likely become a public charge. Therefore, we do not find the applicant inadmissible under section 212(a)(4) of the Immigration and Nationality Act.

Finally, the director in her Notice of Intent to Deny advised the applicant that “the documents you submitted do not establish that you entered the US before January 1, 1982 and resided in continuous unlawful status since that date through May 4, 1988.”

The purpose of the notice of intent is to allow the applicant an opportunity to address any discrepancies or adverse information outlined by the director. The director, however, did not specify why the documents were considered insufficient and, therefore, the Notice of Intent to Deny by no means specifically informed the applicant of any information to an extent to which the applicant could explain discrepancies or rebut any adverse information. The record, as it stands, does not contain sufficient evidence to establish the applicant’s entry into the United States prior to January 1, 1982 and her continuous residence since such date through August 13, 1984. Furthermore, the applicant has provided an inconsistent affidavit from affiant, [REDACTED] regarding the applicant’s residence from 1980 to 1982.

Accordingly, the case will be remanded for the issuance of a Notice to Deny addressing the above and any other perceived shortcomings. If the new decision is adverse, it may be certified to this office.

**ORDER:** The case is remanded for appropriate action and decision consistent with the foregoing.