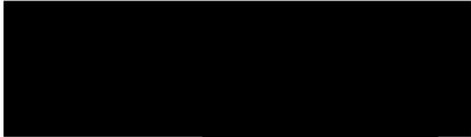


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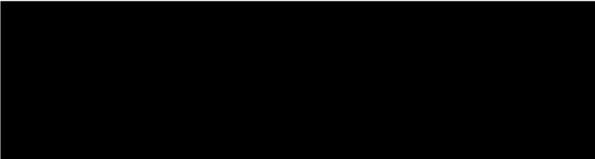
Applicant:



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:



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, Chicago, Illinois, 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 was physically present in the United States since before January 1, 1982 through May 4, 1988. Specifically, the director determined that the applicant had not submitted evidence to establish her presence in the United States prior to 1985.

On appeal, counsel questions the director's denial of the application based on the applicant's failure to submit sufficient evidence to prove physical presence in the United States from January 1, 1982 to May 4, 1988. Counsel submits copies of previously submitted documentation in support of the appeal.

The director erred in his determination that the applicant had not established physical presence in the United States from prior to January 1, 1982 through May 4, 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. Section 1104(c)(2)(B) of the LIFE Act; 8 C.F.R. § 245a.11(b). An applicant must only establish that he or she was continuously physically present in the United States from November 6, 1986 through May 4, 1988. Section 1104(c)(2)(C) of the LIFE Act; 8 C.F.R. § 245a.11(c). Nonetheless, the evidence does not establish that the applicant has submitted sufficient evidence to establish continuous residency in the United States during the requisite period.

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 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).

In an affidavit to determine class membership, which she signed under penalty of perjury on May 26, 1990, the applicant stated that she first arrived in the United States on December 1, 1981, when she crossed the border without inspection. On her Form I-687, Application for Status as a Temporary Resident, which she also signed under penalty of perjury, the applicant stated that she worked as a self-employed babysitter from February 1982 to the "present." The applicant further stated that she lived at the following addresses in Fort Wayne, Indiana during the requisite period:



In an attempt to establish continuous unlawful residence since before January 1, 1982 through 1984, the applicant submitted the following evidence:

1. A July 14, 2003 affidavit from [REDACTED] in which he stated that the applicant had been a family friend since 1979, and that the applicant contacted him upon her arrival in the United States in December 1981. The affiant did not indicate any address at which the applicant lived in the United States.
2. A copy of a July 14, 2003 affidavit from [REDACTED] in which he stated that he met the applicant at a church service on Christmas day 1981. The affiant did not indicate the church where he met the applicant, and on her Form I-687 application, the applicant identified no church with which she was affiliated during the qualifying period. The affiant did not indicate any address at which the applicant lived in the United States.
3. A copy of an April 21, 1988 letter from [REDACTED] who identified himself as a commercial loan officer. The letter indicated that the applicant and her husband opened a savings account at the bank on September 2, 1982 and a demand deposit on July 23, 1987. The letter is not clear as to why a commercial loan officer signed the letter instead of a manager or someone in account services. Additionally, the letter is addressed to the applicant and her husband at [REDACTED] in Fort Wayne. The applicant did not claim to have lived at this address during the qualifying period.
4. A copy of a student transcript from Indiana Vocational Technical College, indicating that the applicant was enrolled and took classes at the institution beginning with the summer session of 1983/1984. The summer session started on August 31, 2003, and the applicant received her Associate of Applied Science degree on November 13, 1984. The applicant also submitted a copy of a December 21, 1984 letter confirming her graduation from the school in November. The letter, however, is addressed to the applicant at [REDACTED] in Fort Wayne, an address at which the applicant stated she began living in April 1986. The applicant also received her Bachelor of Science degree in data processing from the school on May 25, 1986. We note that, according to the transcript, the applicant enrolled in the bachelor's degree program on August 29, 1984 and indicated that her permanent address was in Lagos, Nigeria.

5. A copy of a March 21, 1984 letter from the vice president and dean of Indiana Vocational Technical College, congratulating the applicant for making the dean's list for the winter quarter. The letter is addressed to the applicant at [REDACTED]. We note that the applicant stated that she lived at [REDACTED].

While the school transcripts are sufficient to establish the applicant's presence and residence in the United States beginning in August 1983, the applicant's evidence contains conflicting documentation regarding the addresses at which she lived from 1981 to 1984. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant submitted no documentation to resolve these inconsistencies. Additionally, the applicant submitted two affidavits attesting to her presence in the United States in December 1981. However, both of these documents are from close family friends who do not identify an address at which the applicant lived upon her arrival in the United States. The applicant stated that she lived at [REDACTED] in Fort Wayne from her arrival until July 1983. However, she submitted no evidence to corroborate her residence at this location. The applicant submitted no contemporaneous documentation of her presence and residency in the United States prior to August 1983. Further, although the applicant stated that she worked as a babysitter during the qualifying period, she identified no employer and submitted no documentation to corroborate any employment during this period.

Accordingly, given the unresolved inconsistencies in the record, the absence of any contemporaneous documentation, and the absence of documentation verifying her employment, it is concluded that the applicant has failed to establish continuous residence in the United States from prior to January 1, 1982 to August 1983.

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