



U.S. Citizenship
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[REDACTED]

LE

FILE: [REDACTED]
MSC 02 074 62755

Office: LOS ANGELES

Date: **APR 01 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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits [or Records] Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 appeal will be dismissed.

The district director denied the application because the applicant had not demonstrated 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 for the applicant submits a brief and additional documentation.

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 district 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).

While there is no specific regulation that governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements that affidavits are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information that an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i), letters from employers attesting to an applicant's employment must provide: the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and, identify the location of such company records and state whether such records are accessible or, in the alternative, state the reason why such records are unavailable. The regulation further allows that if official company records are unavailable, an affidavit form letter stating that the alien's employment records are unavailable and explaining why such records are unavailable may be submitted in lieu of meeting the requirements at (E) and (F) above.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(v), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to.

Nevertheless, an affidavit not meeting all the foregoing requirements may still merit consideration as "any other relevant document" pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

On July 16, 2004, the district director issued a Notice of Intent to Deny (NOID) stating that the affidavits submitted by the applicant did not contain sufficient information and were not accompanied by corroborating documentation – thus lacking evidentiary weight. The district director granted the applicant 30 days to submit a rebuttal to the notice.

In response, counsel submitted a letter, dated August 12, 2004, stating that the applicant had provided sufficient proof that she entered the United States before January 1, 1982 and resided in continuous unlawful status since that date through May 4, 1988. Counsel listed some of the affidavits previously submitted and asserted that they were accompanied by corroborative documents.

In a decision dated October 26, 2004, the district director denied the application stating that the information submitted in response to the NOID had failed to overcome the grounds for denial as stated in the notice.

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:

1. An affidavit, dated October 2, 1993, from [REDACTED] Los Angeles, California, stating that the applicant came to Los Angeles from Mexico in December 1980 and lived with her until December 1981. While not required, the affidavit is not accompanied by proof of identification or any evidence that [REDACTED] resided in Los Angeles during the relevant period and otherwise lacks details that would lend credibility to her statement.
2. An affidavit from [REDACTED] Gardena, California, stating that the applicant had lived and worked in her home taking care of her children from January 1984 to May 15, 1988. While the affidavit is accompanied with documentation of Ms. [REDACTED]'s identity and residence in Gardena, it is undated and otherwise lacks details that would lend credibility to her statement.
3. A letter, dated June 20, 2005, from [REDACTED] of Saint Catherine Laboure Church, Torrance, California, stating that the applicant, a resident of Lawndale, California, had been a member of the church since 1980. The letter does not discuss what activities the applicant was involved in with the church and/or how often [REDACTED] had contact with the applicant during the relevant time period.
4. A letter, dated June 5, 2003, from [REDACTED] of Saint Catherine Laboure Church, stating that the applicant, a resident of Lawndale, had been a member of the parish since 1982, and that he had personally known her throughout "most of" those 21 years. Two additional letters, both dated June 20, 2005, from [REDACTED] state that he has been a priest at the church since 1976, pastor since 1987, and that he has known [REDACTED] since 1976. Rev. [REDACTED] also states that he has personally known the applicant since about 1980, but also does not give any details as to what activities the applicant was involved in with the church and/or how often he had contact with the applicant during the relevant time period.
5. An affidavit, dated June 24, 1993, from [REDACTED] Lawndale, California, stating that she met the applicant at a party in December 1983, and has personal knowledge that the applicant was physically present in Lawndale from that date until June 1993. While not required, the affidavit is not accompanied by proof of identification or any evidence that [REDACTED] resided in Lawndale during the relevant period and otherwise lacks details that would lend credibility to her statement.
6. A photocopy of an affidavit, dated February 27, 1990, from [REDACTED] Redondo Beach, California, stating that she had known the applicant since December 1981 and that the applicant had done some housecleaning, baby sitting and other types

of odd jobs for her. A second (undated) declaration from [REDACTED] states that she met the applicant at a function (Our Lady of Guadalupe celebration) at St. Catherine Labore church (no address given) in 1981 and that the applicant told her (the affiant) that she (the applicant) had entered the United States by walking from Tijuana, Mexico. Ms. [REDACTED] further states that the applicant came to help her with her son from about 1981 to 1983. In a third hand-written letter, dated May 8, 2003, Ms. [REDACTED] reaffirms her prior statements.

7. A receipt, dated December 13, 1980, from Color Tile, that does not show the recipient's name, and therefore has no evidentiary value.
8. A generic REDIFORM invoice, dated August 3, 1981, from Buenos Electronics, Huntington Park, California. The Buenos Electronics address is stamped on the invoice and the applicant's name is signed by her under "sold to" in her own handwriting.
9. Photocopies of an incomplete Internal Revenue Service (IRS) Form 1040 (U.S. Individual Income Tax Return) and illegible IRS Form W-2 (Wage and Tax Statement) for 1988. The total wages on the Form W-2 appears to be incompatible with the total income listed on the Form 1040. Furthermore, the Form 1040 shows earnings for 1988, but does not offer corroborating evidence to show which dates the applicant worked during that year. More significantly, no IRS forms for 1982 through 1987 have been provided.
10. An RTD pass dated November 1986. There is no evidence to establish that the document was issued to the applicant other than her signature on the reverse.

On appeal, counsel again asserts that the applicant has submitted sufficient proof that she entered the United States before January 1, 1982, and resided in continuous unlawful status since that date through May 4, 1988.

In summary, the applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), and no hospital or medical records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv). The applicant also has not provided documentation (including example money order receipts, passport entries, children's birth certificates, bank book transactions, letters of correspondence, a Social Security card, or automobile, contract, and insurance documentation) according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (I) and (K). The tax records submitted are incomplete, partially illegible, and cover only 1988. The documentation provided by the applicant consists solely of third-party affidavits ("other relevant documentation") and church attestations. These documents lack specific details as to how the affiants knew the

applicant – how often and under what circumstances they had contact with the applicant – during the requisite time period from 1982 through 1988.

The regulation at 8 C.F.R. § 245a.12(e) provides that “[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods.” Preponderance of the evidence is defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black’s Law Dictionary 1064 (5th ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

Given the insufficiencies noted above in the documentation provided, the AAO determines that the applicant has not met her burden of proof. The applicant has not established, by a preponderance of the evidence, that she entered the United States before January 1, 1982, and resided in this country in an unlawful status continuously since that time through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b).

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