

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L2

FILE:

MSC 02 316 61641

Office: NEW YORK

Date: DEC 30 2008

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits 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.


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to demonstrate that she resided in the United States in a continuous, unlawful status from before January 1, 1982, through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, the applicant asserts that the director's decision was erroneous. She contends that all of her witnesses are still available and willing to testify under oath in support of her claim. She submits additional evidence on appeal.

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 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 through May 4, 1988. See § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant 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 section 1104 of the LIFE Act. 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.12(f). 8 C.F.R. § 245a.2(d)(6).

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.* at 80. 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.

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The issue in this proceeding is whether the applicant (1) entered the United States before January 1, 1982, and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of her claim to have arrived in the United States before January 1982 and resided in an unlawful status during the requisite period consists of attestations from individuals claiming to know the applicant, letters of employment, church letters and bills/statements. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed. The AAO has reviewed each document in its entirety to determine the applicant’s eligibility; however, the AAO will not quote each witness statement in this decision.

The affidavits from [REDACTED] and [REDACTED] all contain statements that the affiants have known the applicant since 1981 or 1982, and that they attest to the applicant being physically present in the United States during the requisite period. These affidavits fail, however, to establish the applicant’s continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.

None of the witness statements provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant’s residence during the time addressed in the affidavits. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows

an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

The declarations from [REDACTED] and [REDACTED] deacons at St. Therese of Lisieux, fail to meet the requirements under the regulation at 8 C.F.R. § 245a.2(d)(3)(v). The declarations fails to show inclusive dates of membership, state the address where the applicant resided during membership period, establish how the author knows the applicant, and establish the origin of the information being attested to. Lacking relevant details, this declaration provides little probative value and will be given minimal weight as evidence of the applicant's residence in the United States during the requisite period. It is also noted that, upon verification, both declarants stated that they began working at the church several years after the applicant's claimed membership commenced at the church. These discrepancies undermine the credibility of the declarants and seriously cast doubt on the credibility of the applicant's claim.

The affidavit from [REDACTED] indicated that the applicant resided with her at [REDACTED] from September 1981 to June 7, 1990. However, this is inconsistent with the applicant's own testimony in her Form I-687, Application for Status as a Temporary Resident. In her Form I-687, the applicant stated that her residence at the above address began in September 1984. This discrepancy detracts from the credibility of the affiant.

The employment affidavits from [REDACTED] and [REDACTED] are of little value because they fail to conform to the regulatory standards for letters from employers as stated under the regulation at 8 C.F.R. § 245a.2(d)(3)(i). Both affidavits fail to provide the applicant's address at the time of employment. It is also noted that [REDACTED] submitted two attestations which are inconsistent with each other. In her affidavit, dated June 26, 1987, [REDACTED] stated that the applicant had worked for her for the last three years. This would mean that the applicant's employment began in 1984. However, in her second affidavit, dated May 7, 1990, [REDACTED] stated that the applicant had been employed since March 1986. In addition, [REDACTED] second affidavit presents discrepancies with the statements of [REDACTED] who stated that the applicant worked for her as an attendant until July 1986. There is nothing in the record indicating that the applicant's employment overlapped between the two employers.

The record also contains two bills/statements in the applicant's name, dated in 1987 and 1988, and a 1987 receipt in the applicant's name. This evidence presents some evidence of the applicant's presence in the United States in 1987 and 1988.

The final item of evidence is the applicant's 1986 W-2 Wage and Tax Statement. The document indicates that the applicant was employed by [REDACTED]. It is noted that the applicant failed to indicate that she was ever employed by [REDACTED] in her testimony or applications.

Based on the above discussion, the documents presented provide little probative value or inconsistent information. No explanation is provided for the noted inconsistencies. These discrepancies are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. The evidence provided by the applicant, therefore, is not deemed credible and shall be afforded little weight. 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 petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The AAO concludes that the applicant has failed to establish by a preponderance of the evidence that she entered the United States before January 1, 1982 and maintained continuous, unlawful residence from such date through May 4, 1988, as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act.

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