



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
MSC 02 229 63358

Office: DALLAS

Date: FEB 27 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:

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. 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, Dallas, 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 failed to demonstrate that she had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

On appeal, applicant asserts that she entered the United States in March 1984 and stayed for three months. She states that she entered with a passport and came to visit her brother, who was in the hospital. She asserts that the passport was stolen.

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 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 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).

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet her burden of establishing entry into the United States before January 1, 1982, and continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

On May 17, 2002, the applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status, as the beneficiary of her spouse's claim for class membership. This, however, does not imply that she derives adjustment of status based on the application of her spouse. Rather, the applicant must establish her own eligibility. The application will be adjudicated based on the merits of the applicant's documentation.

In a July 14, 2004, Notice of Intent to Deny, the director stated that the applicant failed to provide any evidence of her presence during the required time period from January 1, 1982, through May 4, 1988. The applicant was granted thirty (30) days to submit additional evidence. The record reflects that no evidence was submitted. In the January 27, 2005, Notice of Decision, the director noted that during a May 7, 2004, interview, the applicant stated that she did not enter the United States to reside until 1989. The director denied the instant application and determined that the applicant was ineligible for adjustment of status under LIFE Legalization.

On her Form I-485, the applicant indicated her date of last arrival as June 1989. During her May 7, 2004, interview, the applicant stated, under oath and in writing, that she first entered the United States in 1984 with a visa to visit for three months. She also stated that she entered in June 1989 in order to reside in the United States. On appeal, she confirms her interview statement. She states that she entered in 1984 with a passport. She came to visit her brother, who was in the hospital. She claims that the passport was later stolen.

The AAO concludes that the applicant has not met her burden. The applicant's claimed residency is not credible. There is no evidence that the applicant entered before January 1, 1982. Based on her own statements, the applicant first entered the United States in 1984. However, she entered with a valid visa and possessed lawful status. She later entered the United States for the purposes of residence in 1989. Thus, the record does not contain any contemporaneous evidence, or other sufficient credible evidence, to establish that the applicant resided in the United States prior to January 1, 1982.

The applicant has, therefore, failed to establish that she resided in continuous unlawful status in the United States from before January 1, 1982 through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, she is 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.