

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L2



FILE:



Office: DETROIT

Date: JAN 23 2008

MSC 01 328 60572

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:



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, Detroit, Michigan, 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, counsel contends that the applicant remains "eligible" to adjust status under other bases, and therefore, removal proceedings should not be initiated against the applicant.

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 and verifiable evidence to 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. Here, no such evidence was submitted.

On August 24, 2001, 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 November 19, 2004, Notice of Intent to Deny (NOID), the director noted that the applicant entered the United States for the first time on January 31, 1986. The applicant was granted thirty (30) days to submit additional evidence. The record reflects that no evidence was submitted. In a December 28, 2004, Notice of Decision (NOD), the director denied the instant application based on the applicant's sworn testimony.

The record reflects that on the applicant's Form I-485, the applicant indicated her date of last arrival as January 31, 1986. During an August 26, 2003, interview, the applicant certified, under penalty of perjury, that she entered the United States for the first time on January 31, 1986 on a B-2 visa. Based on the applicant's own statements, the AAO concludes that the applicant's claimed residency is not credible. 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.

It is further noted that, on appeal, counsel incorrectly asserts that the applicant meets the definition of an eligible alien because she was married to her spouse at the time he was front-desked under 8 C.F.R. § 245a.10, and therefore, may benefit from the Family Unity provisions of the LIFE Act. The record reflects that the applicant's marriage was dissolved on April 22, 2003. Section 1504(b) of the LIFE Act states that for the purposes of application of Family Unity provisions, "...the term 'eligible spouse or child' means an alien who is the spouse or unmarried child of an alien described in section 1104(b) of the Legal Immigration family Equity Act...." As the applicant was divorced on April 22, 2003, the applicant may not benefit from the Family Unity provisions of the LIFE Act.

Based on the above, the applicant has 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.