

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

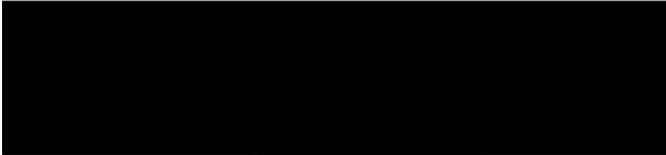
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L2



FILE: [REDACTED] Office: NEW YORK Date: **JUL 22 2008**
MSC 02 256 61312

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. 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.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

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

On July 17, 2007, the director denied the application, finding that the applicant was statutorily ineligible for adjustment of status under the LIFE Act. The director noted that the applicant stated during her interview that she first entered the United States in 1982 using someone else's documents because she did not apply for a visa. She stated that she returned to her country when her father died and reentered the United States on September 24, 1986, with a nonimmigrant B-2 visitor visa.

On appeal, counsel for the applicant asserts that the applicant claimed on her application that she entered the United States using a false passport in 1981 and resided continuously in the United States as required by statute. Counsel asserts that the applicant left the United States for Jamaica because her father passed away and that she returned to the United States on September 24, 1986, using a B-2 visa. The applicant asserts that she entered the United States before January 1, 1982, and that she believed she swore to this at her interview. She submits two additional affidavits.

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).

On June 13, 2002, the applicant submitted the current Form I-485, Application to Register Permanent Residence or Adjust Status. On April 12, 2004, the applicant appeared for an interview based on her application. At the interview, the applicant signed a handwritten statement, indicating that she entered the United States in 1982 under someone else’s name. The statement is also signed by the interviewing officer and an unidentified witness.

On May 27, 2005, the director sent the applicant a Notice of Intent to Deny (NOID) her application. The director stated that during her interview, the applicant signed a sworn statement stating that she entered the United States for the first time in 1982. The director noted that the applicant stated that she used someone else’s traveling document because she did not apply for a visa. She returned to her country when her father died and she entered the United States on September 24, 1986, as a nonimmigrant with a B-2 classification. Because of this, the director found that the applicant was statutorily ineligible for adjustment under the LIFE Act. The director stated that the burden of proof lies with the applicant to show, by a preponderance of the evidence that, he or she resided in the United States for the requisite periods. The director informed the applicant that she had 30 days from the receipt of the NOID to rebut or submit evidence to overcome the director’s intent to deny his application. In response, the applicant submitted a signed statement, indicating that she entered the United States before January 1, 1982.

On August 5, 2005, the director denied the application. The director acknowledged the applicant’s response to the NOID, but found that it was insufficient to overcome the grounds for denial. The director noted that the applicant did not furnish new evidence to prove her claim of her unlawful status and continuous residence between January 1, 1982, and May 4, 1988. The director stated that the applicant claimed to misunderstand the statement taken at the interview and noted that she never requested an interpreter because she speaks English as her first language. The director concluded that the applicant was able to understand the interviewer and answered all the questions truthfully. The director noted that the interviewer told the applicant that her statement

must be made freely and voluntarily and that she was not under duress or pressured to write or sign the statement.

On appeal, counsel for the applicant asserts that the applicant claimed on her application that she entered the United States using a false passport in 1981 and resided continuously in the United States as required by statute. Counsel asserts that the applicant left the United States for Jamaica because her father passed away and that she returned to the United States on September 24, 1986, using a B-2 visa. Counsel asserts that her time spent outside the United States was for less than 45 consecutive days. Counsel asserts that the director's decision does not clearly track the language in the NOID and is therefore arbitrary and capricious. Counsel asserts that the decision puts forth faulty logic to support its finding. Counsel asserts that the decision posits that the applicant could not have misunderstood the question regarding her date of entry because she speaks English as her first language and because her statement was not made under duress. Counsel asserts that the applicant misunderstood the question she was asked and the statement she signed. The applicant resubmits the statement submitted in response to the NOID, indicating that she entered the United States before January 1, 1982, and that it was her understanding that this was what she swore to at the time of her interview. She submits two additional affidavits.

The issue in this proceeding is whether the applicant provided sufficient credible evidence to establish that she continuously resided in the United States during the requisite period.

Regarding the discrepancy as to the applicant's date of entry referred to by the director, 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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The record reflects that on her Form I-687, Application for Status as a Temporary Resident, dated March 20, 1992, and on a questionnaire submitted to seek adjudication of her application for legalization dated March 25, 1992, the applicant stated that she entered the United States in June 1981 and that she reentered the United States on September 23, 1986. The director states that during the interview, the applicant stated that she entered in 1982 and voluntarily signed a sworn statement to that effect. The applicant explains that she misunderstood the question, not because of her ability to speak and understand English, but simply because she misunderstood. She indicates in her statement that she entered the United States before January 1, 1982 and that she thought that this was what she was swearing to during her interview. This explanation is sufficient. It is reasonable and logically consistent that the applicant misunderstood the question at the interview and mistakenly said 1982 when she meant 1981. Therefore, the director's decision to deny the application based on the applicant's statement that she entered the United States in 1982 is withdrawn. The application cannot be approved, however, because the applicant has not established her continuous unlawful residence from before January 1, 1982, through May 4, 1988.

The record of proceeding contains the following evidence relating to the requisite period:

Letters and Affidavits

- An “Affidavit of Residence” form dated February 18, 1992, from [REDACTED]. The form states that the applicant lived with the affiant at the listed address from May 1985 to present. The form language states that the rent receipts and household bills were in the affiant’s name and that the applicant contributed toward payment of the rent and household bills. This affidavit, prepared on a fill-in-the-blank form, contains no details regarding any relationship with the applicant during the requisite period and fails to state when or where the affiant and the applicant met. Mr. [REDACTED] fails to indicate any personal knowledge of the applicant’s claimed entry to the United States or of the circumstances of her residence other than her address. In addition, there is no evidence that the affiant resided in the United States during the requisite period;

Three “Affidavit of Witness” forms, dated February 20, 1992, February 28, 1992, and March 13, 1992. The forms, signed by [REDACTED], and [REDACTED], respectively, list the applicant’s addresses in New York from June 1981 through the present, and are consistent with information on her Form I-687. The form language states that the affiant has personal knowledge that the applicant has resided in the United States at the address listed. The form allows the affiant to fill in a statement that he or she “is able to determine the date of the beginning of his or her acquaintance with the applicant in the United States from the following fact(s): ____.” Ms. [REDACTED] added “[REDACTED] is a nice and wonderful person, who is caring and understanding”; Ms. [REDACTED] added “[REDACTED] and myself are good friends. We attended the same church and I can testify that she is here since June 1981”; and, Ms. [REDACTED] added “I have know[n] [REDACTED] to be a wonderful, kind decent person. And I am will to testify that she is United States since 1981.” These affidavits, prepared on a fill-in-the-blank form, contain minimal details regarding a relationship with the applicant during the requisite period and fail to state when or where the affiants and the applicant met. The affiants fail to indicate any personal knowledge of the applicant’s claimed entry to the United States or of the circumstances of her residence other than her address. In addition, there is no evidence that the affiants resided in the United States during the requisite period;

A letter dated February 19, 1992, from [REDACTED] Ms. [REDACTED] states that she loaned her documents to the applicant to travel to Jamaica while her father had died in August 1986. She states that she felt for her and gave the applicant her documents to travel. This letter can be given little weight as the information in it contradicts the applicant’s statement that she used false documents to enter the United States in 1982. According to the record and her own statements, the applicant entered the United States on September 24, 1986, using her own

passport and a visa issued to her. The applicant has not provided any explanation regarding this inconsistency.

For the reasons noted above, these affidavits can be given little evidentiary weight and are of little probative value as evidence of the applicant's residence and presence in the United States for the requisite period. Although the applicant has submitted numerous affidavits in support of her application, she has not provided any contemporaneous evidence of residence in the United States during 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. Although not required, none of the affidavits included any supporting documentation of the affiants' presence in the United States during the requisite period. The duplicative language and use of forms also detract from the probative value of the affidavits.

Church Letter

A letter dated January 28, 1992, signed by [REDACTED] of Our Lady of Lourdes Spiritual Baptist Church, in Brooklyn, New York. Ms. [REDACTED] states that the applicant was an active member of the church from August 1985. She states that the applicant is the lead singer in the choir and spends most of her time teaching in their Young Children Group.

This letter can be given little evidentiary weight and has little probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the letter does not explain the origin of the information attested to nor does it provide the address where the applicant resided during the period of her involvement with the church.

Employment Letter

A letter dated February 28, 1992, from [REDACTED], stating that the applicant had been working for her as a child care helper since December 1986. She states that the applicant is presently paid \$220 per week and that she is a good worker.

This letter can be given little evidentiary weight because it lacks sufficient detail and information required by the regulations. Specifically, the employer failed to provide the applicant's address at the time of her employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the employer also failed to declare which records her information was taken from, to identify the location of such records, and to state whether such records are accessible, or, in the alternative state the reason why such records are unavailable. In addition, the letter listed her positions but did not list the applicant's duties.

The remaining evidence in the record is comprised of the applicant's own statements in which she claims to have first entered the United States in June 1981 and to have resided for the duration of the requisite period in New York. As noted above, to meet her burden of proof, the

applicant must provide evidence of eligibility apart from her own testimony. The applicant has failed to do so. Given the applicant's reliance upon documents with minimal probative value, the applicant has failed to establish continuous residence in an unlawful status in the United States for the requisite period, as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*.

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, for 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 documentation provided by the applicant consists solely of affidavits. These third-party affidavits 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 prior to 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 insufficiency in the evidence, 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, resided in this country in an unlawful status continuously since that time through May 4, 1988, and maintained continuous physical presence in the United States during the period from November 6, 1986 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Thus, 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.