



U.S. Citizenship
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Services

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FILE:



Office: NEW YORK

Date:

JUL 25 2008

MSC 02 142 61168

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. 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.

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, New York, New York, 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 entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988. The director noted that the applicant failed to appear for a scheduled interview as requested by the director in a notice of intent to deny (NOID), dated October 13, 2006, which was mailed to the applicant's address of record and was returned as undeliverable. The director, therefore, denied the application for lack of prosecution.

On appeal, the applicant states that she never received the director's notice of intent to deny although she has resided at the same address, since June 17, 2002, and asks for an opportunity to document her case. The applicant does not submit 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 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).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that 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.

In the Notice of Intent to Deny (NOID), the director notified the applicant that she had failed to appear for an interview on October 6, 2006, rescheduled the interview for October 13, 2006, and informed the applicant that failure to appear at this interview would result in her case being denied for lack of prosecution.

As noted by the director in her denial notice, the applicant failed to appear at the scheduled interview on October 13, 2006. In the Notice of Decision, dated December 6, 2006, the director denied the instant application for lack of prosecution and because the applicant failed to demonstrate that she entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

It is noted that the record reflects that on June 23, 2006, the director mailed the NOID, via certified mail return receipt requested, to the applicant at [REDACTED] which was the applicant’s address of record and which she maintained at time of appeal. However, the NOID was returned undelivered. The record also reflects that the director subsequently mailed the denial notice to the applicant at the same address, [REDACTED] which the applicant did receive.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she continuously resided in the United States in an unlawful status during the requisite period.

The record reflects that the applicant stated she on her I-687 application that she first entered the United States in 1981, and that she departed the United States and traveled to Colombia on November 10, 1985 to apply for a U.S. Visa, returned to the United States on November 20, 1985; and, again departed the United States on September 19, 1987 for Colombia, to visit her family. She returned to the United States on October 14, 1987 with a non-immigrant visa which was issued by

the U.S. Consulate in Bogata, Colombia, on October 6, 1987. The applicant was then admitted to the United States until April 13, 1988, as a B-2 visitor. It is noted that in order to receive such a visa, the applicant had to convince a U.S. consular official that she had resided and worked in Colombia.

As determined by the director, the applicant failed to submit sufficient credible evidence to demonstrate that she continuously resided in the United States in an unlawful status during the requisite period. The evidence of record casts considerable doubt on the applicant's claim that she continuously resided in the United States since 1981. It is noted that the applicant has submitted affidavits from individuals attesting to knowing the applicant in the United States since 1981. For example, the applicant submitted affidavits sworn to on November 26th 1991 from [REDACTED], and from [REDACTED] each attesting to knowing that the applicant resided in the United States from October 1981. However, these affidavits are questionable given the evidence of record that the applicant entered the United States in November 1987 with a non-immigrant visa. In addition, as noted above, the issuance of the applicant's U.S visa is inconsistent with her claim that she resided in the United States since 1981. 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. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that she continuously resided in the United States in an unlawful status during the requisite period.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, he 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.