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U.S. Citizenship
and Immigration
Services

L2



FILE:



Office: SAN FRANCISCO

Date: JUL 29 2008

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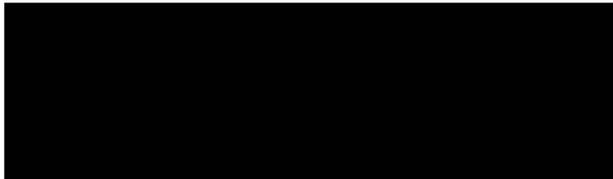
IN RE: Applicant:



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.

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

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, San Francisco, California, 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.

On appeal, counsel for the applicant states that the applicant has submitted sufficient evidence in the form of affidavits to establish the requisite continuous residence. Counsel submits additional affidavits 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 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), dated October 18, 2004, the director notified the applicant that the record reflects that the applicant was issued a U.S. visa in 1985, and the records submitted begin in 1986. Therefore, the applicant could not establish that she had resided continuously in unlawful status during the requisite period. The director granted the applicant thirty (30) days to submit additional evidence.

The applicant responded to the NOID and provided affidavits and other documents. The director, however, determined that the evidence submitted was insufficient to establish the applicant's continuous residence and physical presence during the requisite period. In the Notice of Decision, dated September 19, 2006, the director denied the application noting that the applicant responded to the NOID, but failed to overcome the reasons for denial stated in the NOID.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate her continuous residence in the United States in an unlawful status, and her physical presence, during the requisite period.

The record reflects that the applicant submitted affidavits and letters attesting to her residence, and additional documents as evidence to support her Form I-485 application. Here, the submitted evidence is not relevant, probative, and credible.

The record reflects that the applicant's passport was issued in Mexico on October 23, 1985, and she obtained a non-immigrant visa from the U.S. Consulate in Mexico, on November 12, 1985. The applicant subsequently entered the United States, via San Francisco International Airport, on April 18, 1986, with authorization to stay until October 18, 1986, and she was admitted again on June 26, 1988 as a B-2 non-immigrant, with authorization to stay until January 21, 1989 (as evidenced by the I-94, Arrival Departure Card and Service NIIS record). It is noted that although the applicant claims that she had entered the United States prior to January 1, 1982, in order to receive such a visa, the applicant had to convince a U.S. consular official that she resided and worked in Mexico. Therefore, the applicant has failed to establish that she resided in the United States in an unlawful status since January 1, 1982 through May 4, 1988.

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. As also noted above, the discrepancies in the applicant's claimed entry date and period of unlawful residence, and the record of evidence, cast considerable doubt on the applicant's claim that she resided in the United States since prior January 1, 1982 in unlawful status. It is noted that the applicant has submitted affidavits from individuals attesting to knowing the applicant in the United States since 1981. However, these affidavits lack detail and are not probative. For example, affidavits from [REDACTED] state that they are the applicant's cousins, and that she resided with their family from 1981. However, although both affiants gave generalized descriptions of their activities with the applicant, they do not date their activities with the applicant with specificity or state how they dated any such activities. Also, [REDACTED], another affiant, states that he has known the applicant and her husband since 1981 and that he worked with them for nine years. However, [REDACTED] does not state during what period he worked with the applicant. It is noted that on her Form I-687 the applicant did not list that she had worked for any one employer for nine years during the period from October 1981 through June 1990. Another affiant, [REDACTED] states that he has known the applicant since 1981, and that the applicant was a frequent shopper who often visited him to have letters translated into English. [REDACTED] however, does not state how frequently the applicant visited him or whether the applicant has been a continuous resident since he became acquainted with her. A fifth affiant, [REDACTED] attests only to knowing the applicant since 1983. [REDACTED] states that he became friends with the applicant; however, he does not state how they maintained their friendship or whether the applicant has been a continuous resident since their acquaintance.

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 in an unlawful status 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, 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.