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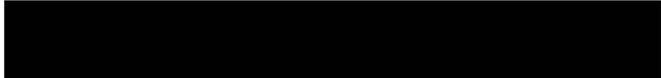


FILE: MSC 02 208 61854

Office: LOS ANGELES

Date: MAR 21 2008

IN RE: Applicant:

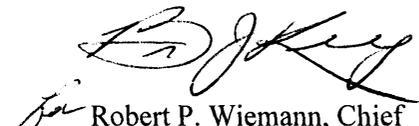


APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT: 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. Any further inquiry must be made to that office.

  
for 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, Los Angeles, 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 had not demonstrated that she had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

On appeal, the applicant asserts that she has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. The applicant provides copies of previously submitted documents in support of the appeal.

An applicant for permanent resident status must 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. 8 C.F.R. § 245a.11(b).

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).

Here, the submitted evidence is not relevant, probative, and credible. In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided the following evidence throughout the application process:

- A statement dated November 9, 2005, from a tax preparer, [REDACTED] of Canoga Park, California, who indicated she prepared the income tax returns for the applicant's father every year since 1981. The affiant asserted that the applicant would accompany her father on each occasion and the applicant's attended her daughter's Sweet 16 birthday party.
- Statements dated April 2, 2002, from her father, [REDACTED] and her brother, [REDACTED] of Canoga Park, California, who attested to the applicant's [REDACTED] residence at [REDACTED] from 1981 to 1998.
- A statement dated April 2, 2002, from an aunt, [REDACTED] of Northridge, California, who indicated that prior to residing with her father, the applicant resided with her for two months at [REDACTED] Northridge, California. The affiant asserted that the applicant babysat her children for two years.
- A Social Security statement dated September 9, 2005, which reflects the applicant's earnings in 1986.

The applicant also submitted a letter dated January 31, 1985, from the principal of Canoga Park High School. However, as the applicant's name was not listed on the letter, it has no probative value or evidentiary weight.

In response to the Notice of Intent to Deny dated November 2, 2005, the applicant asserted that she did not have any rent receipts as all the bills were paid in cash and that no taxes were reported until 1986 because she worked as a babysitter. In response, the applicant submitted copies of documents that were previously provided along with:

- An amended statement dated November 15, 2005, from her father, who indicated that prior to residing with him, the applicant resided with her aunt, [REDACTED] from 1981 to 1985 in Northridge, California.
- An amended statement dated November 14, 2005, from [REDACTED] who indicated that prior to residing with her father, the applicant resided with her from 1981 to 1985 in Northridge, California.
- A statement dated November 14, 2005, from [REDACTED] of Winnetka, California, who attested to the applicant's residence in the United States since 1981. The affiant asserted that he and the applicant resided in the same apartment complex until 1985 when she moved with her father to [REDACTED]
- Several photographs the applicant claimed were taken in 1981, 1982 and 1985.

The applicant's statement regarding the inability to produce additional evidence of residence for the period in question has been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant continuously resided in the United States since before January 1, 1982 through 1985 as she has presented contradictory documents, which undermines her credibility. Specifically:

1. The applicant claimed on her Form I-687 application that she was a babysitter for her aunt from March 1981 to October 1985. However, the aunt indicated in her statement that the applicant babysat her children for only two years.
2. The affidavit from [REDACTED] has little probative value or evidentiary weight as the affiant indicated that she has known the applicant since 1981, but provided no address for the applicant during the period.

3. In his initial affidavit, the applicant's father asserted that the applicant resided with him from 1981 to 1998. However, in his subsequent affidavit, the father amended his statement to indicate the applicant resided with him commencing in 1985.
4. In her initial affidavit, the applicant's aunt asserted that the applicant resided with her for two months. However, in her subsequent affidavit, the aunt amended her statement to indicate the applicant resided with her from 1981 to 1985.

As conflicting statements have been provided, it is reasonable to expect an explanation from the affiants in order to resolve the contradictions. However, no statement from the father or the aunt has been submitted to resolve the contradicting affidavits. As such, the affiant's affidavits have no probative value or evidentiary weight in establishing the applicant's continuous residence prior to 1986.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 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 (5<sup>th</sup> ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991). Given the credibility issues arising from the documentation provided by the applicant, absence of a plausible explanation, it is determined 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 and resided in this country in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant 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.