



U.S. Citizenship
and Immigration
Services

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FILE:

MSC 02 141 68154

Office: NEW YORK

Date:

MAY 22 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:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits [or Records] Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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, 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, applicant asserts that the director erred in denying her application to adjust status under the LIFE Act. The applicant submits additional evidence to establish her claim. The applicant maintains that she has continuously resided in an unlawful status in the United States during the requisite period.

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).

In the Notice of Intent to Deny (NOID), dated on May 23, 2006, the director stated that the applicant failed to submit sufficient evidence demonstrating her continuous unlawful residence in the United States during the requisite period. The director granted the applicant thirty (30) days to submit additional evidence. The record reflects that additional evidence was received. In the Notice of Decision, dated June 27, 2006, the director determined that the evidence failed to overcome the grounds for denial stated in the NOID. The director denied the instant applicant.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she entered the United States before January 1, 1982, and continuously resided in an unlawful status in the United States during the requisite period. Here, the applicant has failed to meet this burden.

In support of her claim, the record contains the following relevant evidence:

1. An August 20, 2006, affidavit from [REDACTED], who stated that he has known the applicant for 26 years. The affiant stated that the applicant has resided in the United States since 1981, resided for approximately 6 years in Queens, New York, and moved to the affiant's household at [REDACTED], Bronx, New York, from 1987 through 1993. The affiant provided his place of residence and telephone number. This affidavit reaffirms the affiant's previous affidavit dated on June 14, 2006. The affiant failed to indicate the applicant's place of residence during the entire requisite period. Although not required, the affidavit failed to include any supporting documentation of the affiant's presence in the United States during the requisite period. The affiant failed to indicate how he dated his acquaintance with the applicant, how he met the applicant or how frequently he saw the applicant. The lack of details detracts from the credibility of the affiant.
2. An August 20, 2006, affidavit from [REDACTED] who stated that she has known the applicant since 1987. She stated that the applicant was her neighbor and lived at [REDACTED], in the apartment of [REDACTED]. The affiant provided her place of residence, telephone number, and email address. This affidavit reaffirms the affiant's previous affidavits dated on June 13, 2006 and January 21, 2002. The affiant has no first-hand knowledge of the applicant's presence in the United States prior to 1987. The affiant failed to indicate the applicant's place of residence during the entire requisite period. Although not required, the affidavit failed to include any supporting documentation of the affiant's presence in the United States during the requisite period. The lack of details detracts from the credibility of the affiant.

3. An August 20, 2006, affidavit from [REDACTED] who stated that she has known the applicant since 1987. She stated that the applicant was her neighbor and lived at [REDACTED]. The affiant provided her place of residence and telephone number, as well as the applicant's current residence. This affidavit reaffirms the affiant's previous affidavits dated on June 14 2006 and March 26, 1993. The affiant has no first-hand knowledge of the applicant's presence in the United States prior to 1987. The affiant failed to indicate the applicant's place of residence during the entire requisite period. Although not required, the affidavit failed to include any supporting documentation of the affiant's presence in the United States during the requisite period. The lack of details detracts from the credibility of the affiant.
4. An August 20, 2006, affidavit from [REDACTED] who stated that she has known the applicant since 1984. The affiant provided her place of residence and telephone number. The affiant has no first-hand knowledge of the applicant's presence in the United States prior to 1984. The affiant failed to indicate the applicant's place of residence during the requisite period. Although not required, the affidavit failed to include any supporting documentation of the affiant's presence in the United States during the requisite period. The affiant failed to indicate how she dated her acquaintance with the applicant, how she met the applicant or how frequently she saw the applicant. The lack of details detracts from the credibility of the affiant.
5. An August 22, 2006, affidavit from [REDACTED] who stated that he has known the applicant since 1987. He stated that the applicant was resided at [REDACTED] Bronx, New York, for a long period of time. The affiant has no first-hand knowledge of the applicant's presence in the United States prior to 1987. Although not required, the affidavit failed to include any supporting documentation of the affiant's presence in the United States during the requisite period. The affiant failed to indicate how he dated his acquaintance with the applicant, how he met the applicant or how frequently he saw the applicant. The lack of details detracts from the credibility of the affiant. The affidavit provides minimal probative value.
6. A November 23, 1992, affidavit from [REDACTED] who stated that the applicant worked with her as a cleaner for PCA Development and Building Construction Corp. The affiant stated that the company is no longer in business. The affiant stated that the applicant worked for the company from June 1981 to 1987 for a salary of \$120 per week. The affiant provided her telephone number. The affiant failed to indicate the applicant's place of residence during the requisite period. Although not required, the affidavit failed to include any supporting documentation of the affiant's presence in the United States during the requisite period. The lack of details detracts from the credibility of the affiant.
7. An April 21, 1993, affidavit from [REDACTED] who stated that the applicant rented an apartment (room) from her from April 4, 1981 to July 20, 1987. The affiant provided her

place of residence. The affiant failed to indicate the applicant's place of residence during the requisite period or to provide any rent receipts, household bills, etc. Although not required, the affidavit failed to include any supporting documentation of the affiant's presence in the United States during the requisite period. The affiant also failed to indicate how she dated her acquaintance with the applicant, how she met the applicant or how frequently she saw the applicant. The lack of details detracts from the credibility of the affiant.

8. An April 21, 1993, declaration from [REDACTED], who stated that the applicant worshiped and attended religious services in St. Bartholomew Church since 1981 until 1987. The declarant stated that at that time the applicant resided at [REDACTED], Emhurst, New York. The declarant provided his address and telephone number. The declarant failed to establish how the author knows the applicant and establish the origin of the information being attested to as required under the regulation at 8 C.F.R. § 245a.2(d)(3)(v). The lack of details detracts from the credibility of the affiant.
9. A January 21, 2002, notarized declaration from [REDACTED] who stated that he has known the applicant for 20 years. The declarant provided the applicant's current place of residence and his telephone number. The declarant failed to indicate the applicant's place of residence during the requisite period. The declarant failed to indicate how he met the applicant, how he dated his acquaintance with the applicant or how frequently he saw the applicant. The lack of details detracts from the credibility of the affiant.
10. Seven fill-in-the blank affidavits, which are virtually identical, by [REDACTED] and [REDACTED]. All of the affiants provided a vague description of how they met the applicant and their places of residence. None of the affiants included the applicant's place of residence during the requisite period, provided an exact date of when they met the applicant, or dated their acquaintance with the applicant. These affidavits provide little probative value.
11. Three envelopes addressed to the applicant and postmarked in 1984 and 1987. The postmark is faded, except for the date-stamp. The date-stamp is bright red and clearly legible. The fact that the entire postmarked section of the envelope is faded, except for the date-stamp, brings into question the credibility of the evidence. Thus, the envelopes are given little weight.

The record also contains the applicant's Form for Determination of Class Membership in *CSS v. Meese*. The applicant stated that she first entered the United States in April 1981. However, to meet her burden of proof, an applicant must provide evidence of eligibility apart from her own testimony. 8 C.F.R. § 245a.2(d)(6). Although the applicant has submitted numerous affidavits in support of her claim, the applicant has not provided sufficient evidence of entry into the United States in April 1981. None of the affidavits provide any first-hand knowledge of the applicant's entry into the

United States. None of the affidavits corroborate the applicant's claim of entry into the United States through Tijuana.

In addition, the applicant has not provided sufficient contemporaneous evidence of residence in the United States from before January 1, 1982, through 1985. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Only five of the affidavits stated that the applicant resided in the United States beginning in 1981. Those five affidavits lack sufficient details that detract from the credibility of the affiant. The remaining affidavits, which also lack sufficient details, attested to the applicant's presence in the United States in 1984 and 1987. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of her claim. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon documents with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States 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.