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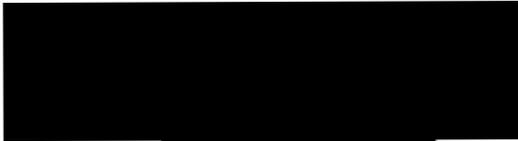
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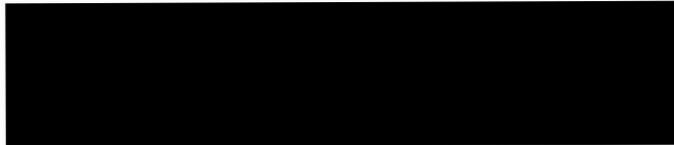
MSC 02 248 60700

Office: NEW YORK

Date:

NOV 04 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 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 director in New York City. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the grounds that the applicant failed to establish (1) that she entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and (2) that she is admissible to the United States, in that she willfully submitted fraudulent documentation in support of her application.

On appeal counsel asserts that the director failed to give proper weight to the evidence submitted by the applicant and improperly relied on minor discrepancies which the applicant successfully rebutted. Counsel further asserts that an immigration preparer by the name of "Dalia" submitted false affidavits on the applicant's behalf without her knowledge as to their contents.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. See section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

"Continuous unlawful residence" is defined at 8 C.F.R. § 245a.15(c)(1), as follows: "An alien shall be regarded as having resided continuously in the United States if *no single absence* from the United States has *exceeded forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed." (Emphases added.)

"Continuous physical presence" is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: "An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of *brief, casual, and innocent absences* from the United States." (Emphasis added.) The regulation further explains that "[b]rief, casual, and innocent absence(s) as used in this paragraph means *temporary, occasional trips abroad* as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States." (Emphasis added.) 8 C.F.R. § 245a.16(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 its amenability to verification. See 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.

The applicant, a native of Yugoslavia who claims to have lived in the United States since December 1980, filed her application for legal permanent resident status under the LIFE Act (Form I-485) on June 5, 2002. At that time the record included the following documentary evidence of the applicant’s residence in the United States during the years 1981 through 1988, most of which had been filed in 1990 along with a Form I-687 (application for status as a temporary resident) and a class membership determination form in the Catholic Social Services (CSS) v. Meese legalization class action lawsuit:

- Copies of a Form 1040, U.S. Individual Income Tax Return, and a New York State, City of New York, City of Yonkers, Resident Income Tax Return, for the year 1985, for [REDACTED] and [REDACTED], residing at [REDACTED] Bronx, New York, signed by the preparer on March 12, 1986.
- A copy of the applicant’s marriage certificate indicating that the applicant and her husband were married in Brooklyn, New York, on March 9, 1987.

- Copies of the birth certificates of the applicant's children indicating that the applicant gave birth to a daughter in Brooklyn, New York, on October 31, 1987, a son in Manhattan, New York, on May 7, 1991, and a son in Bronx, New York, on October 11, 1997.
- A copy of an invoice from Hospital Baby Portraits addressed to the applicant at [REDACTED] Bronx, New York, dated November 14, 1987, for an order placed by the applicant on November 10, 1987.
- An affidavit from [REDACTED] a resident of Yonkers, New York, dated March 23, 1990, stating that the applicant is his relative, that the applicant arrived in the United States in December 1980, and lived with him from December 1980 to June 1983 in his home located at [REDACTED] Bronx, New York, and that the applicant has continuously lived in the United States except for when she traveled to Yugoslavia in 1986 because her mother and sister were ill, and when she traveled to Yugoslavia to get married in 1987.
- An affidavit from [REDACTED] a resident of New York City, dated March 26, 1990, stating that the applicant was employed by him (in an unstated capacity) from March 1981 to August 1987 at a weekly salary of \$250.00 plus two weeks vacation, that when the applicant started working for him she resided at [REDACTED] Bronx, New York, that in June 1983 the applicant informed him that she moved in with her fiancée at [REDACTED] Bronx, New York, and in June 1984 she and her fiancée moved to [REDACTED] Bronx, New York, and that the applicant used to be known as [REDACTED].
- An affidavit from [REDACTED] a resident of Bronx, New York, dated March 26, 1990, stating that he had known the applicant, also known as [REDACTED], since January 1983, and that he had seen the applicant every other week since then.
- An affidavit from [REDACTED] a resident of Bronx, New York, dated March 26, 1990, stating that he had known the applicant, also known as [REDACTED] for the past six years, having first met her in 1984.
- An affidavit from [REDACTED] a resident of Bronx, New York, dated April 21, 1990, stating that he is a good friend of the applicant and her husband, that he drove the applicant and her husband to the airport on August 1, 1986, when they traveled to Yugoslavia, and picked them up on August 31, 1986, when they returned to the United States, and that he drove the applicant and her husband to the airport again on December 1, 1987, when they traveled to Yugoslavia, and

picked them up from the airport and drove them home on December 30, 1987, when they returned to the United States from Yugoslavia.

In a Notice of Intent to Deny (NOID), dated April 13, 2007, the director cited inconsistencies between the applicant's testimony at her LIFE legalization interview on March 31, 2004, and documentation in the file. Specifically, the director noted that while the applicant testified at her interview that she entered the United States in 1981, and that she did not work in the United States in the 1980s, information on her Form I-687 and the affidavits submitted on the applicant's behalf in 1990 stated otherwise. While the applicant testified on March 31, 2004, that she did not leave the United States at all during the 1980s, she stated on her Form I-687 that she traveled outside the United States twice during the 1980s – in 1986 and in 1987. The director concluded that the inconsistencies in the record cast doubt on the veracity of the applicant's claim that she resided continuously in the United States from before January 1, 1982 through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

In response the applicant offered some explanations for the evidentiary inconsistencies cited in the NOID. The applicant and her counsel acknowledged that some of the affidavits submitted on the applicant's behalf contained false information, but asserted that the applicant was unaware of it and blamed the error on the immigration preparer who assisted the applicant in preparing her Form I-687. The applicant submitted copies of some documentation already in the record.

On July 16, 2007, the director issued a Notice of Decision denying the application. The director indicated that the admission of fraud by the applicant rendered her inadmissible, and that the documentation of record was insufficient to establish that the applicant entered the United States before January 1, 1982 and thereafter resided continuously in the United States in an unlawful status through May 4, 1988.

On appeal counsel asserts that the director failed to give proper weight to the evidence submitted by the applicant and improperly relied on minor discrepancies which the applicant successfully rebutted. Counsel submits the following additional documentation with the appeal:

- Another affidavit from [REDACTED],¹ a resident of Cross River, New York, dated September 14, 2007, stating that the applicant is his niece, that the applicant entered the United States in January 1981, that she came to live with him because he is her only relative, that the applicant was fifteen years old when she arrived in the United States, that the applicant did not want to attend school and he did not enroll her in any school, that the applicant resided with him until 1985, when she moved in with her fiancée, whom she married in 1986. Mr. [REDACTED] denied that he signed and submitted the affidavit dated March 23, 1990, on the applicant's behalf.

¹ The affiant's name was spelled differently in the earlier affidavit.

- Another affidavit from [REDACTED] a resident of New York City, dated September 13, 2007, stating that he knew the applicant entered the United States in 1981 and resided with her uncle, [REDACTED], because he was good friends with the applicant's uncle and her husband, that he visited [REDACTED]'s home and would see the applicant, and that the applicant did not work or attend any school in the United States. Mr. [REDACTED] denied that he prepared and signed an affidavit dated March 26, 1990, on the applicant's behalf.
- An affidavit from [REDACTED] a resident of Bronx, New York, dated September 13, 2007, stating that he is a close family friend of the applicant and her husband, that he knew the applicant entered the United States in January 1981, and lived with her uncle until 1986 when she got married to her husband.
- Seven photocopies of photographs of the applicant with other people at various locations, including what appears to be at her wedding, with no authenticating notations on the photographs regarding the dates they were taken.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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 resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that she has not.

The AAO finds that the copy of the birth certificate showing that the applicant gave birth to her first child in New York on October 31, 1987, the marriage certificate indicating that the applicant and her husband were married in New York City on March 9, 1987, the invoice from Hospital Baby Portraits dated November 14, 1987, and the hospital bill dated September 13, 1988, for services rendered October 1-3, 1987, constitute credible evidence that the applicant resided in the United States from early 1987 through May 4, 1988. The AAO will now focus on evidence relating to the years 1981-1986.

The applicant testified at her LIFE legalization interview on March 31, 2004, that she entered the United States in 1981, but could not remember the month, that she lived with her uncle [REDACTED] [REDACTED] in Yonkers until 1986 when she moved in with her husband, that she did not attend school, and that she had never worked in the United States. The applicant has disavowed all the

affidavits from 1990 as fraudulent creations of “ [REDACTED] ” the preparer of her Form I-687. That leaves just the three affidavits submitted on appeal.

The affidavits dated in 2007 are from individuals who claim to have resided with or otherwise known the applicant during the 1980s. They all have minimalist formats with vague and general information that could just as easily have been supplied by the applicant. Considering the length of time they claim to have known the applicant, the affiants provide remarkably few details about her life in the United States and their interaction with her over the years. None of the affiants describe the circumstances of the applicant’s arrival in the United States, allegedly in 1981, and none identifies the address where she allegedly resided until the mid-1980s. Nor are the affidavits accompanied by any documentary evidence from the affiants – such as photographs, letters, and the like – of their personal relationship with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the affidavits have little probative value. They are not persuasive evidence of the applicant’s continuous unlawful residence in the United States during the years 1981-1986.

The AAO notes that the affidavit statement by [REDACTED] that the applicant did not work during the time she lived with her uncle contradicts the photocopied tax returns (federal and New York State) for the year 1985, which were submitted with the Form I-687 in 1990. In those tax returns (the federal Form 1040 is dated March 12, 1986) the applicant declared adjusted gross income for 1985 of \$22,239. There is no proof that either tax return was actually submitted to federal or state authorities in 1986. Moreover, the applicant has not explained how she could have earned this amount of income in a year she claims not to have worked. As the authenticity of the tax returns is in doubt, they have little or no evidentiary weight.

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 without competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant’s evidence also reflects on the reliability of other evidence in the record. *See id.*

Finally, the copies of the photographs submitted on appeal have no probative value as evidence of the applicant’s residence in the United States during the years 1981-1986. There are no notations on the photographs as to when they were taken, and even if they were taken during the 1980s they would not establish, in and of themselves, that the applicant resided in the United States at that time.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that she entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act. Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

The appeal will be dismissed, and the application denied.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.