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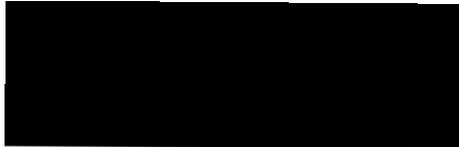
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
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Services

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FILE:

MSC 02 246 66591

Office: DALLAS

Date: NOV 20 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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, Dallas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to demonstrate that she resided in the United States in a continuous, unlawful status from before January 1, 1982, through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, the applicant, through counsel, asserts that the director erred in finding that the applicant failed to provide evidence of her presence in the United States during the requisite period. Counsel contends that the applicant has met her burden to provide substantial, credible, and verifiable evidence in support of her claim of continuous residence. Counsel requests that the director's decision be overturned and the instant application approved pursuant to the LIFE Act.

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 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 through May 4, 1988. See § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant 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 section 1104 of the LIFE Act. 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.* at 80. 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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant’s own testimony. 8 C.F.R. § 245a.12(f).

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet the burden of establishing, by a preponderance of the evidence, that the applicant’s claim of continuous unlawful residence in the United States during the requisite period is probably true. Upon an examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has failed to meet this burden.

In support of the applicant’s claim of continuous residence, the record contains the following evidence relevant to the requisite period:

1. Two affidavits from [REDACTED] stated that he has known the applicant since 1981 when she was 13 years old. He also stated that the applicant’s sister worked for him. [REDACTED] stated that he has known the applicant through her sister, [REDACTED], from 1982 to 1984. He also stated that he lived a few streets away from them. Both affiants stated that the applicant and her sister resided at [REDACTED]. The affiants failed to provide details regarding their claimed friendship with the applicant or to provide any information that would indicate personal knowledge of the applicant’s 1981 entry into the United States or the circumstances of her residence in the United States. Both affiants claim a relationship to the applicant through her sister, but they fail to note how or where they met the applicant. Lacking relevant details, these affidavits have minimal probative value.
2. An affidavit from [REDACTED] who stated that he has known the applicant and her sister since 1988 at [REDACTED]. The affiant fails to provide details regarding his claimed friendship with the applicant or to provide any information that would indicate personal knowledge of the applicant’s place of residence or the circumstances

of her residence. Although he claims to have known the applicant since 1988, he failed to note the exact date. The AAO cannot conclude whether the relationship was established within the statutory period. Lacking relevant details, this affidavit has minimal probative value.

3. An affidavit from [REDACTED] who stated that he has known the applicant and her sister since November 1981. The affiant stated that they rented his property located at [REDACTED] Texas, from November 1981 to February 1986. The record also includes two rent receipts received by [REDACTED] dated December 1, 1981, and April 1, 1982. The receipts indicate that they resided at [REDACTED] and paid \$300.00 rent to [REDACTED]. While the receipts corroborate [REDACTED] affidavit, the receipts do not include the name of the applicant. This evidence will be given only minimal weight in support of the applicant's entry and residence in the United States prior to January 1, 1982.
4. Copies of two appointment verifications from the Dallas County Hospital District in the applicant's name, dated February 21, 1982 and June 7, 1984. As noted in the director's Notice of Decision, dated August 20, 2007, the evidence appears to have been altered and dated prior to the revision date. On appeal, counsel submits an affidavit from the applicant denying any forged or altered documents. 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 unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The record contains no independent, objective evidence to explain the above discrepancy. Therefore, this evidence can be given no weight as evidence of the applicant's residence in the United States.
5. Two affidavits from Pastor [REDACTED] who stated in one letter that the applicant had been coming to his church since December 4, 1981 to January 1990, and in a second letter from February 4, 1981 to January 1987. By regulation, letters from churches, unions or other organizations attesting to the applicant's residence must: identify the applicant by name; be signed by an official whose title is shown; show inclusive dates of membership; state the address where the applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization; establish how the author knows the applicant; and establish the origin of the information being attested to. 8 C.F.R. § 245a.2(d)(3)(v). The affidavits fail to meet the regulatory requirements. The affiant failed to state the address where the applicant resided during the membership period, establish how the affiant knows the applicant, and establish the origin of the information being attested to. Because the affidavits are significantly lacking in relevant detail and are inconsistent about the applicant's dates of membership, they lack probative value and have only minimal weight as evidence of the applicant's residence in the United States during the requisite period.
6. A declaration from [REDACTED] who stated that the applicant had been a patient on and off since December 1981 until the present time. The declarant also stated that

the applicant resided at [REDACTED] Texas; [REDACTED]

[REDACTED] The record also includes four prescription notes from the declarant in the applicant's name, dated March 7, 1983, July 12, 1983, March 11, 1986, June 2, 1986. The record also contains copies of two Dallas County Hospital District Appointment Slips in the applicant's name, dated February 5, 1985, and July 9, 1985. This evidence will be given some weight in support of the applicant's residence in the United States in 1981, 1983, 1985 and 1986.

7. Two envelopes addressed to the applicant, postmarked on January 7, 1987, and April 16, 1988. The applicant's address on the envelopes is consistent with the applicant's place of residence during that time period. These postmarked envelopes will be given some weight as evidence of the applicant's residence in the United States in 1987 and 1988.
8. A declaration from [REDACTED] who stated that she has known the applicant since 1982 when she met the applicant at church. The affiant stated that the applicant and her sister cleaned her condo until July 1986. While the affiant provided a detailed description of meeting the applicant and her sister, the affiant failed to provide any information that would indicate personal knowledge of the applicant's place of residence or the circumstances of her residence. Lacking relevant details, this affidavit provides minimal probative value.
9. A declaration from [REDACTED] who stated that the applicant purchased a car from P and C Motors in 1987. This evidence will be given some weight as evidence of the applicant's residence in 1987-1988.

For the reasons noted above, the documents submitted in support of the applicant's claim have been found to lack credibility or to have minimal probative value as evidence of the applicant's residence and presence in the United States for the requisite period. Although several documents were submitted in support of the applicant's residence in the United States, the majority of the evidence has minimal probative value or contains clearly altered dates. The questionable nature of some of the evidence seriously detracts from the credibility of the applicant's claim.

The AAO finds that, upon an examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the applicant has not shown by a preponderance of the evidence that she resided in the United States for the requisite period.

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 lack of credible supporting documentation and the inconsistencies noted in the record, it is concluded that the applicant has failed to establish by a preponderance of the evidence that she entered the United States before January 1, 1982 and maintained continuous, unlawful residence from such date through May 4, 1988, as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, 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.