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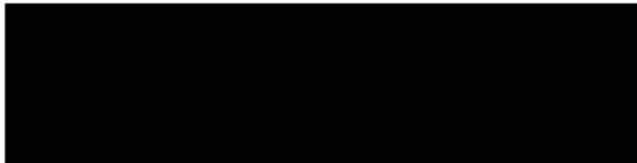
IN RE: Applicant:



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. 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.

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 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 ground that the applicant failed to establish that she maintained continuous residence in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the director failed to adequately evaluate the evidence submitted by the applicant and the explanations provided for the evidentiary inconsistencies noted by the director. In counsel's opinion, the applicant submitted sufficient evidence to establish that she resided continuously in the United States from before January 1, 1982 through May 4, 1988. Counsel does not submit additional evidence on appeal.

To be eligible for adjustment to permanent resident status under the LIFE Act an applicant must establish his or her continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and 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.”

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 applicant, a native of Trinidad and Tobago who claims to have lived in the United States since August 1978, filed her application for legal permanent resident status under the LIFE Act (Form I-485) on May 31, 2002. As evidence of her residence in the United States during the years 1981-1988 the applicant submitted a series of letters and affidavits as well as other documents. They include the following:

- An affidavit from [REDACTED], a resident of Plainview, New York, dated March 29, 2004, stating that she had known the applicant for a long time, that the applicant first visited the United States in 1978 and stayed with her in New York, and that they have remained good friends since then.
- An affidavit from [REDACTED], a resident of Brooklyn, New York, dated April 16, 2004, stating that she had known the applicant since 1981, that they were roommates then and that they have remained good friends since then.
- A letter from [REDACTED], a resident of Florence, South Carolina, dated December 5, 1988, stating that the applicant was employed by her as a “domestic” from March 1988 to December 1989.
- Copies of New York Telephone bills addressed to the applicant dated September 28, 1978, October 28, 1979, August 28, 1980, December 28, 1981, November 28, 1982, and January 28, 1983.
- Copies of Bell Atlantic telephone bills addressed to the applicant dated October 28, 1984, July 28, 1985, June 28, 1986, and May 28, 1987, as well as copies of Con Edison electric bills addressed to the applicant dated August 4, 1987 and February 1, 1988.

In a Notice of Intent to Deny (NOID), issued on April 18, 2007, the director reviewed copies of the applicant’s Form I-687, Application for Status as a Temporary Resident, dated November 28, 1989, as well as personal affidavit dated December 7, 1989, accompanying the Form I-687, and

other documentation in the file. The director noted inconsistencies between the applicant's testimony at her LIFE Legalization interview on April 20, 2004, information on the Form I-687, the personal affidavit accompanying the Form I-687, and information on her passport.

Specifically, the director noted that the applicant stated on the affidavit accompanying the Form I-687 that she first entered the United States on August 23, 1978, and remained in the United States until July 1987, when she traveled to Trinidad to visit her family, and returned to the United States in August 1987. On the Form I-687, the applicant listed two absences from the United States, from July 1987 to August 1987 and from July 1989 to August 1989. The information on her passport however, shows otherwise. The information on her passport indicated that the applicant entered the United States with a B-2 non-immigrant visa on September 1, 1985, that she departed the United States on September 21, 1985 and did not return to the United States until July 4, 1987. The director noted that this one absence breaks the continuous residency requirement in that the trip was in excess of a single absence of 45 days, and that the applicant did not provide any explanation as to why she could not have returned to the United States within the 45-day limit.

The director noted additional information in her passport, including a stamp issued in Barbados on November 25, 1983, allowing the applicant to enter Barbados; several stamps issued by BNS Trinidad & Tobago LTD., Queen/Charlotte STS. Pos T'Dad., W.I., dated July 26, 1980, October 25, 1983, August 30, 1985, and June 26, 1987; a B-1/B-2 non-immigrant visa issued on August 28, 1985 in Port-of-Spain, valid for one year; another copy of B-1/B-2 visa issued on October 10, 1986 in Port-of-Spain, valid until October 9, 1987; and a visa issued on October 15, 1986, in Port-of-Spain, allowing the applicant to enter Venezuela, all of which further undermined the credibility of the applicant's claim that she had resided continuously in the United States since 1978.

The director noted that the affidavits appeared neither credible nor amenable to verification, and that at least some of the telephone bills appeared to be forged. The applicant was given 30 days to submit additional evidence in support of her claim.

In response, counsel asserted that the applicant had provided sufficient evidence to demonstrate that she is eligible for LIFE legalization. Counsel submitted additional documentation including a personal affidavit from the applicant providing some explanation for the discrepancies noted by the director in the NOID. Other documents included the following:

- A letter from Reverend _____ of St. John 's Ridgewood United Methodist Church in Ridgewood, New York, dated May 4, 2007, stating that the applicant had been a member of the church in good standing since 1980.
- Copies of the cover pages of Ladies' Home Journal magazine for October and December 1985, April and November 1986, and January 1987, with the applicant's name and address affixed on the magazine.

- Copies of [REDACTED] and [REDACTED] identity documents.

Copies of photographs showing the applicant and other people.

On May 26, 2007, the director issued a Notice of Decision denying the application. The director stated that the response and the additional documentation were insufficient to overcome the grounds for denial stated in the NOID.

On appeal, counsel asserts that the director failed to properly evaluate the evidence submitted by the applicant. Counsel reiterates his assertion that the applicant has submitted sufficient evidence to establish her eligibility for adjustment of status under the LIFE Act.

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 applicant stated on her Form I-687, dated November 28, 1989, that she departed the United States twice in July 1987 and July 1989, for one month each time. In an affidavit dated December 4, 1989, the applicant stated that she entered the United States on August 23, 1978 and resided continuously in the country until July 1987, when she traveled to Trinidad for one month, and again until July 1989, when she traveled to Trinidad for one month. The applicant did not list any other absences from the United States. Information in the record however, indicates otherwise.

Specifically, information on the applicant's passport indicates that the applicant entered the United States on a B-2 non-immigrant visa on September 1, 1985 and left the United States on September 21, 1985. This entry and exit is corroborated by the records of Citizenship and Immigration Services (CIS). The record also indicates that the applicant returned to the United States on July 4, 1987, nearly two years later. Thus, the applicant's testimony that she made only two trips outside the United States in 1987 and 1989 for one month each time contradicts the information in her passport and in CIS records.

The inconsistencies noted above undermine the veracity of the applicant's claim of continuous residence in the United States from before January 1, 1982 through May 4, 1988. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits 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 petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence. *See id.*

The record indicates that the applicant was absent from the United States from September 21, 1985 to July 4, 1987, which far exceeded the 45-day maximum for a single absence prescribed in the regulation at 8 C.F.R. § 245a.15(c)(1). An absence of such duration interrupts an alien's continuous residence in the United States unless (s)he can show that a timely return to the United States could not be accomplished due to emergent reasons. While the term "emergent reasons" is not defined in the regulations, there is some pertinent case law. In *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), the Board of Immigration Appeals held that *emergent* means "coming unexpectedly into being." The applicant has not explained what sort of "emergent reasons" prevented her return to the United States within 45 days.

The utility bills from New York Telephone, Bell Atlantic telephone, and Con Edison, are clearly fraudulent. The name of the applicant on all the bills appears to have been typed using a different font from the rest of the bill. The ink used to type the applicant's name appears to be darker than that used on the rest of the bill. The spacing between the applicant's name and address and the remainder of the bill appears to be different with each bill. Thus, the utility bills are not credible evidence. They are not persuasive evidence of the applicant's continuous residence in the United States during the statutory period required under the LIFE Act.

The remainder of the documents, consisting of copies of photographs showing the applicant and other people and copies of the cover pages of Ladies' Home Journal magazines, are of little or no probative value as evidence of the applicant's residence in the United States during the statutory period required under the LIFE Act. The photographs are undated and unidentified as to locale. The copies of the cover pages of the Ladies' Home Journal magazine provide possible evidence of the applicant's residence in the United States during the years 1985-1987, but not before. Also, considering the other fraudulent documents in the record, the originals should have been submitted. Even if the AAO accepted the magazine covers as credible evidence of the applicant's residence in the United States in 1985-1987, they would not be sufficient to establish the applicant's continuous residence in the United States from before January 1, 1982, as required for legalization under the LIFE Act.

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, 8 U.S.C. § 245A(a)(2)(A). 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.