

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529-2090
MAIL STOP 2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L2

FILE:

Office: NEW YORK

Date: OCT 31 2008

[redacted]
[redacted]
[redacted] consolidated herein]

MSC 03 183 60732

IN RE:

Applicant: [redacted]

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:

[redacted]
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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, New York, New York. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The 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 from then through May 4, 1988.

On appeal, the applicant submits a brief statement and additional documentation.

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 states 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.

The record reflects that the applicant filed a Form I-589, Request for Asylum in the United States, on June 13, 1994. On that application, the applicant indicated that she arrived in the United States on December 28, 1982, at John F. Kennedy International Airport (JFK), New York, with authorization to remain in the United States until June 27, 1983. The applicant also indicated on a Form G-325A, Biographic Information sheet, submitted in connection with her Form I-589 and dated May 23, 1994, that she had resided at [REDACTED] Chaguanas, Trinidad, from February 1971 until December 1982.

The applicant filed the current Form I-485, Application to Register Permanent Resident or Adjust Status, under the LIFE Act on April 1, 2003. On this application, the applicant indicated that she had last arrived in the United States in July 1981.

On August 12, 2003, the Director, National Benefits Center, denied the application. The Director, New York, subsequently reopened the application, and the applicant was interviewed in connection with the application on June 3, 2004.¹ At interview, the applicant stated that she initially entered the United States with a passport and visa on December 28, 1982, at John F. Kennedy International Airport, New York, accompanied by her mother, and that she had remained in the United States continuously since that entry.

A review of the record reveals that the applicant submitted documentation establishing her presence in the United States since in or after September 1985, as well as the following documentation dated prior to September 1985:

1. A photocopy of a letter, dated June 21, 1982, from the Albert Einstein College of Medicine of Yeshiva University, Bronx, New York, addressed to the Trinidad Central Bank Loan Department, stating, in part, that [REDACTED] and [REDACTED] had been evaluated at the facility (the Rose Kennedy Center) and continued to be in the program for hearing impaired children.
2. A photocopy of a Medical History and Report Form from the Department of Health - City of New York - Board of Education, signed by [REDACTED] on September 17, 1982. The record indicates that [REDACTED], [REDACTED], is the applicant's mother.

In a Notice of Intent to Deny (NOID), dated August 21, 2006, the director determined that the applicant had failed to establish that she entered the United States before January 1, 1982, and resided in a continuous unlawful status from then through May 4, 1988. The director specifically noted that the applicant had stated at interview that she arrived in the United States on December 28, 1982; that she had indicated on her Form I-589 that she entered the United States on December 28, 1982; and, that she

¹ The record reflects that the applicant was assisted at the interview by an interpreter from the New York Society for the Deaf.

had indicated on a Form G-325A that she had resided in Trinidad until December 1982. The applicant was granted thirty days to respond to the notice. The applicant failed to respond to the request.

In a Notice of Decision (NOD), dated April 20, 2007, the director denied the application based on the reasons stated in the NOID.

The applicant filed her appeal from the director's decision on May 15, 2007. In a brief statement submitted on appeal, the applicant writes that she submitted her documents late because she "received [the NOID] too late," and that "either way" she submitted supporting documentation that proves she arrived in the United States in 1981 and proof that "her children had attended school in this country and other valid documentation that proves my continuous presence in this country." It appears that this brief statement was made on the part of the applicant's mother.

In support of the appeal, the applicant also submits:

3. A photocopy of a letter, dated December 14, 1981, from the Department of Health, Bureau for Handicapped Children, [REDACTED], New York, New York, stating, in part, that [REDACTED] and [REDACTED] was given a hearing test at Jacobi Hospital on December 3, 1981, and that further testing was needed.
4. Photocopies of Page 2 of a Form I-687 and one page of an affidavit from the applicant's mother.

The issue in the proceeding is whether the applicant has submitted sufficient documentation to establish, by a preponderance of the evidence, that she entered the United States before January 1, 1982, and resided in a continuous unlawful status from then through May 4, 1988.

The applicant has submitted documentation and testimony indicating that she entered the United States on December 28, 1982 at JFK with a passport and visa. She has also submitted photocopies of documentation indicating that she was present in the United States prior to June 21, 1982 (No. 1, above), and on September 17, 1982 (No. 2). The only documentation submitted to establish the applicant's presence in the United States prior to January 1, 1982, is the photocopy of the letter (No. 3) on which the name of the applicant and the date of the letter are hand-written.

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). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Id.*

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 (5th ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

Pursuant to 8 C.F.R. § 245a.2(d)(5), 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 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 since such date through May 4, 1988, as required for eligibility for adjustment of status to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Thus, 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.