

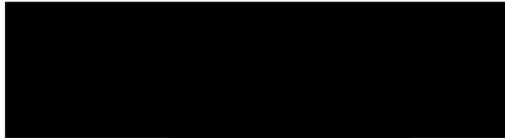


U.S. Citizenship
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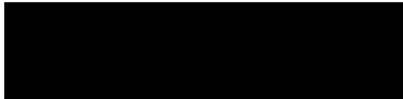


Office: SEATTLE

Date: **SEP 26 2008**

MSC 07 144 11269

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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

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, Seattle, Washington, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988.

On appeal, the applicant states she has submitted substantial documentary evidence and that the director's decision is arbitrary and capricious.

An applicant for permanent resident status 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 and through May 4, 1988. 8 C.F.R. § 245a.11(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 amenability to verification. 8 C.F.R. § 245a.12(e).

An applicant must establish eligibility by a preponderance of the evidence. 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.

Citizenship and Immigration Services (CIS) regulations provide an illustrative list of contemporaneous documents that an applicant may submit to establish presence during the required period. 8 C.F.R. § 245a.15(b)(1); *see also* 8 C.F.R. § 245a.2(d)(3)(vi)(L). Such evidence may include employment records, tax records, utility bills, school records, hospital or medical records, or attestations by churches, unions, or other organizations so long as certain information is included. The regulations also permit the submission of affidavits and any other relevant document, but applications submitted with unverifiable documentation may be denied. Documentation that does not cover the required period is not relevant to a determination of the alien's presence during the required period and will not be considered or accorded any evidentiary weight in these proceedings.

On January 12, 2005, CIS sent a Notice of Intent to Deny (NOID) detailing that the applicant had failed to provide sufficient evidence of her presence during the required time period. The NOID gave the applicant 30 days to provide additional evidence. In response, the applicant asserted that she had already submitted sufficient evidence.

On January 29, 2007, the director denied the application, concluding that the applicant's evidence was insufficient, and that the testimony rendered by the applicant during her interview was inconsistent with her submitted applications.

On appeal, counsel for the applicant calls the director's decision arbitrary and capricious, but fails to address the noted inconsistencies or lack of evidence.

The regulation at 8 C.F.R. 103.3(a)(1)(v) states, in pertinent part:

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

When viewed objectively the appeal statement provided by the applicant fails to specifically state an erroneous conclusion of law or statement of fact. However, the AAO will review the merits of the application for the record.

The applicant has submitted some evidence; however most of the evidence submitted pertains to a time period subsequent to the required period and is not relevant. Relevant to the required period the following evidence has been submitted:

- (1) Document, dated October 21st 1991, signed by _____ asserting the applicant left the United States on July 4, 1987, and returned on August 15, 1987.

The applicant has submitted no evidence that she entered the United States prior to January 1, 1982. The record is so bereft of evidence that the appeal borders on frivolous. Counsel's assertion that sufficient evidence has been submitted is an egregious misstatement of fact.

In addition to the lack of evidence, the applicant's verbal testimony reveals a number of improbable assertions which cast doubt on the applicant's credibility. On October 22, 1991, the applicant gave sworn testimony before an officer of this Service (now CIS) that she entered the United States by presenting a fraudulent passport. She failed to explain how she could depart an international airport without a valid passport.

The applicant has asserted that she departed the United States for a brief period in 1987 to give birth to twins in India, and then returned to the United States a short time later *without her children*. The AAO finds these circumstances suspicious. The applicant has provided no evidence of her departure and no evidence that she was ever in the United States prior to that time, aside from a brief, generic letter from her brother-in-law. A marriage certificate in the record indicates that the applicant was married in India in 1984. The applicant's G-325,

Biographic Information sheet, says she lived in India from 1984 to 1985. The AAO finds that the applicant's assertions and evidence lack credibility.

On appeal counsel fails to address any of the inconsistencies noted by the director, and instead asserts that the single affidavit covering the required period is sufficient to establish eligibility. The AAO disagrees and finds that it is improbable that the applicant entered the United States prior to 1990. Therefore, the director's decision will be upheld.

The applicant has not established that she resided in the United States prior to January 1, 1982, through May 4, 1988. The appeal will be dismissed.

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