



U.S. Citizenship
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FILE:



Office: LOS ANGELES

Date:

APR 01 2009

– consolidated herein]

MSC 03 245 62034

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 in Los Angeles, California. 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 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.

On appeal counsel asserts that the applicant has submitted sufficient evidence to establish that she meets the continuous residence requirement for legalization under the LIFE Act. Counsel further asserts that the director erred in relying solely on the information on the applicant's husband's asylum application in denying the applicant's case to her detriment.

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 Mexico who claims to have lived in the United States since January 1981, filed her application for legal permanent resident status under the LIFE Act (Form I-485) on June 2, 2003.

In a Notice of Intent to Deny (NOID), dated January 28, 2008, the director indicated that the applicant had not submitted sufficient credible evidence to establish that she entered the United States before January 1, 1982 and resided continuously in the country through May 4, 1988. The director indicated that a Form I-589 filed by the applicant’s husband in which the applicant is a dependant indicates that the applicant first entered the United States in 1990. The director further indicated that based on the entry date of 1990, that the applicant is ineligible for legalization under the LIFE Act. The applicant was granted 30 days to submit additional evidence.

In response, counsel reiterated the applicant’s claim that she entered the United States in January 1981. Counsel asserted that the director incorrectly relied on erroneous information on the applicant’s husband’s asylum application in 1994, because the notary who prepared the application for the applicant’s husband made numerous errors that should not be attributed to the

applicant. Counsel contends that the applicant did not complete the form and did not have the opportunity to correct the errors. Counsel submitted a personal affidavit from the applicant in support her assertions.

On March 4, 2008, the director issued a decision denying the application on the ground that the information submitted in response to the NOID was insufficient to overcome the grounds for denial.

The applicant timely appealed. On appeal, counsel asserts that the director erred in relying solely on the information on the applicant's husband's asylum application in denying the application. Counsel further asserts that the information on the asylum application is incorrect, that the applicant did not complete the application herself, and that the notary who prepared the application made a lot of errors which were not corrected. Counsel contends that the applicant should not be penalized for the errors committed by the notary, and that the affidavits submitted by the applicant are sufficient to establish her claim.

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 documentation submitted by the applicant in support of her claim that she entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status through May 4, 1988, consists primarily of a series of letters and affidavits dated in 1995 and 2005, from acquaintances who claim to have known the applicant resided in the United States since 1981. The AAO has reviewed each document in its entirety to determine the applicant's eligibility.

The applicant's claims that she entered the United States in January 1981, resided continuously in the country through May 4, 1988, and had just one trip outside the country to Mexico from July 21 to August 15, 1987, are contradicted by documentation in the record. The file contains a marriage certificate indicating that the applicant was married in Acapulco, Mexico, on December 15, 1986, and a birth certificate for her son, [REDACTED] shows that the applicant gave birth to her son in Mexico on June 18, 1987. The applicant acknowledged on the Form I-485 she filed in 2003, that her son was born in Mexico on June 18, 1987. The applicant did not account for the obvious two absences from the United States on December 15, 1986, to get married and on June 18, 1987, to have a child. The only absence accounted for by the applicant was from July 21, 1987 to August

15, 1987 – a trip to Mexico to visit her sick mother. The inconsistencies between the applicant's claimed entry in 1981, and the contradictory documents in the record placing the applicant outside the United States at a time she claims to have been physically present in the United States, and the applicant's inability to reconcile the discrepancies, casts considerable doubt on the veracity of her claim that she entered the United States before January 1, 1982 and resided continuously in the country thereafter.

The record reflects that the applicant was a dependant on her husband's Form I-589 (asylum application) he filed in 1994. On that form, it was indicated that the applicant entered the United States in June 1990. On the Form G-325A (Biographic Information) dated February 11, 1994, which was submitted with the asylum application in 1994, the applicant indicated her last address outside the United States of more than one year as:

[REDACTED], from November 1961 (month and year of birth) to June 1990. The record reflects that on May 4, 1994, the applicant's husband was interviewed for his asylum application, and was given the opportunity to review the Form I-589 and make all necessary changes during the interview. The applicant's husband affirmed that the applicant entered the United States with his son in June 1990. It is noted that the Form I-589 does not have any preparer's name, address or telephone number as requested, rather the applicant's husband declared under penalty of perjury that he prepared the application and that the information and all accompanying documents with the Form I-589, are true and correct to the best of his knowledge and belief. Thus, the assertions by the applicant and counsel that a notary prepared the application and that the information on the Form I-589 is incorrect is not credible.

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. *See 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.* The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Therefore, the reliability of the remaining evidence offered by the applicant as evidence of her continuous residence in the United States from before January 1, 1982 through May 4, 1988, is suspect and not credible.

The record of proceeding contains a Form I-589, dated February 10, 1994, which counsel contends should, in effect, be excluded in a determination of the applicant's claim by virtue of the fact that the applicant alleged that she had been defrauded by the preparer of her and her husband's Form I-589. The content of the Form I-589, however, is an indelible part of the record. Contrary to counsel's assertion, the applicant is attempting to make a mockery of the immigration law because she has submitted a fraudulent application. Furthermore, even if the content of the Form I-589 is not used, as counsel suggests, to determine the truth of the matter that it sought to convey, there is no basis to exclude the contents of the form in assessing the veracity of the applicant's claim. The AAO will, therefore, examine the entire record and make its determination of the applicant's eligibility based on the entire record as constituted.

The record reflects that the evidence submitted by the applicant in support of her application consists of a series of similarly worded affidavits from acquaintances who claim to have known the applicant resided in the United States during the 1980s. Considering the length of time they claim to have known the applicant – in all cases since 1981 – the affiants provide remarkably little information about the applicant’s life in the United States and their interactions with her over the years. Nor are the affidavits accompanied by any documentary evidence – such as photographs, letters, and the like – of the affiants’ personal relationships with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the affidavits have little probative value. They are not persuasive evidence of the applicant’s continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

As noted above, the applicant has provided contradictory testimony and information in support of her application. The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Thus, it must be concluded 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 through the requisite period 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.