

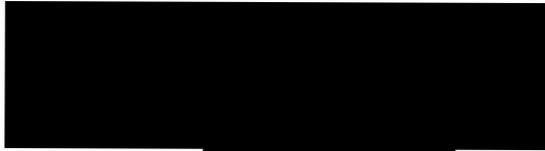


U.S. Citizenship
and Immigration
Services

...ing data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

62



FILE:

MSC 01 313 60249

Office: MEMPHIS

Date:

APR 22 2009

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).

IN 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, Memphis Tennessee, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant had not demonstrated that she had continuously resided 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 documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988.

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 and through May 4, 1988. Section 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 under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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 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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she continuously resided in the United States in an unlawful status during the requisite period. Here, the applicant has failed to meet this burden.

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided the following evidence:

- An affidavit from [REDACTED] who attested to the applicant's absence from the United States from June 1987 to July 1987. The affiant asserted that the applicant was her roommate during 1987.
- An affidavit from [REDACTED], who indicated that she met the applicant "in 1984 at the apartments were I used to live." The affiant asserted that she remained in contact with the applicant since that time.
- An affidavit from an uncle, [REDACTED] who attested to the applicant's entry into the United States in 1971. The affiant asserted that the applicant took care of his wife and resided with him until 1984. The affiant asserted, "[a]fter 1984 she would stay with us awhile and then go to Houston, Texas" until her marriage in 1987.
- An affidavit from [REDACTED], who indicated that he has known the applicant since 1984 and attested to the applicant's moral character.
- Affidavits notarized December 12 and 15, 1999, from [REDACTED] and [REDACTED] respectively indicating they have known the applicant for approximately 15 years. The affiants attested to the applicant's moral character

On June 8, 2006, the director issued a Notice of Intent to Deny, which advised the applicant that the affidavits submitted appeared to be neither credible nor amenable to verification and that no evidence was submitted demonstrating that the affiants had direct personal knowledge of the events testified to in their respective affidavits.

In response, the applicant's former counsel provided:

- A photocopy of her marriage certificate which reflects that the applicant was married in Tennessee on November 16, 1987.
- An affidavit from relatives, [REDACTED] and [REDACTED], who indicated that the applicant resided with them at their house located on [REDACTED] in Brownsville, New York from 1982 to 1984. The affiants asserted that the applicant did not have any utility bills, bank statements and was not employed while she resided in their home.
- An affidavit from [REDACTED], who indicated that she met the applicant in 1984 while visiting some friends in Houston. The affiant asserted that the applicant "needed an interpreter to resolve some issues she had with her apartment [sic] manager."
- An affidavit from [REDACTED] who indicated that he met the applicant in February 1982 in Dallas, Texas. The affiant indicated that the applicant was living in Houston, Texas." The affiant asserted he met the applicant again two years later in Dallas.

- An affidavit from [REDACTED], who indicated that she has known the applicant since January 1, 1982, and attested to the applicant's moral character.

Counsel, on appeal, asserts that the application is supported by affidavits from friends and family members attesting to her continuous residence in the United States since 1971. Counsel provides copies of the affidavits that were previously provided.

The U.S. Citizenship and Immigration Services (USCIS) has determined that affidavits from third party individuals may be considered as evidence of continuous residence. *See Matter of E-- M--*, *supra*. In ascertaining the evidentiary weight of such affidavits, USCIS must determine the basis for the affiant's knowledge of the information to which he/she is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E-- M--*, *supra*, the affidavits should be analyzed to determine if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony provided. The statements issued by the applicant have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through May 4, 1988 as she has presented contradictory and inconsistent documents, which undermines her credibility.

[REDACTED] and [REDACTED] indicated that the applicant resided with them at [REDACTED] in Brownsville, Texas from 1982 to 1984. However, on her Form I-687 application, the applicant claimed residence at this address until December 1975.

[REDACTED] attested to the applicant's residence in Houston, Texas in 1982. However, on her Form I-687 application, the applicant claimed residence in Houston commencing in 1985.

The remaining affiants fail to state the applicant's place of residence during the requisite period, provide any details regarding the nature of their relationship with the applicant or the basis for their continuing awareness of the applicant's residence. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of her claim.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

The evidence must be evaluated not by the quantity of evidence alone but by its quality. The affiants' statements provided do not provide detailed evidence establishing how they knew the

applicant, the details of their association or relationship, or detailed accounts of an ongoing association establishing a relationship under which the affiants could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period. To be considered probative, an affiant's affidavit must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. The affidavit must contain sufficient detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of the facts asserted. The affidavits provided by the affiants do not provide sufficient detail to establish that the witness had an ongoing relationship with the applicant for the duration of the requisite period that would permit the applicant to know of the applicant's whereabouts and activities throughout the requisite period.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim. 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 applicant's reliance upon documents with minimal probative value, it is concluded that the evidence submitted fails to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

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