

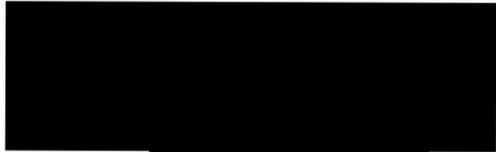
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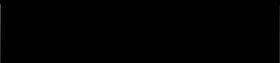
U.S. Citizenship
and Immigration
Services

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FILE:



MSC 01 339 61290

Office: SEATTLE

Date:

FEB 04 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).

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 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 Seattle, Washington. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the grounds that the applicant failed to establish that she entered the United States before January 1, 1982, resided continuously in the United States in an unlawful status from before January 1982 through May 4, 1988, and was continuously physically present in the United States from November 6, 1986 through May 4, 1988.

On appeal, counsel asserts that the director failed to properly evaluate the evidence submitted by the applicant and failed to give due weight to the affidavits of record. In counsel's view, the applicant submitted sufficient, credible and verifiable evidence to establish that she entered the United States before January 1, 1982, and meets the continuous unlawful residence and physical presence requirements for LIFE legalization.

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 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 India who claims to have resided in the United States since May 1980, filed her application for permanent resident status under the LIFE Act (Form I-485) on September 4, 2001.

In a Notice of Intent to Deny (NOID) issued on November 3, 2005, the director noted that the applicant was interviewed twice for LIFE legalization, on June 6, 2002, and on September 22, 2004. On September 22, 2004, the director issued a Request for Evidence (RFE) of the applicant’s entry into the United States before January 1, 1982, her continuous residence in the United States from before January 1, 1982 through May 4, 1988, and her continuous physical presence in the country from November 6, 1986 through May 4, 1988, but the applicant did not respond to the RFE. The director indicated that the applicant’s testimony and other evidence of record showed that the applicant may have been outside the United States from October 1987 through September 1990, an absence that would have interrupted her continuous residence and continuous physical presence in the United States during the requisite periods for legalization under the LIFE Act. The director cited the specific information provided by the applicant on her Form I-485 that she gave birth to her daughter on March 26, 1988 and gave birth to her son on February 10, 1990, both in India. The applicant was granted 30 days to submit additional evidence.

On November 30, 2005, the applicant responded to the NOID with a letter from counsel and a personal affidavit. In her personal affidavit, dated November 22, 2005, the applicant stated that she was absent from the United States twice in the 1980s. The first time was from May 1987 to July 1987 – a trip to Canada of “almost two months” to visit a sick relative. The second time was a trip in February 1988 to India, where she stayed “about two months” and had a baby.

Counsel asserted that although at least one of the applicant's trips lasted more than 45 days, the aggregate of the two trips in 1987 and 1988 did not exceed 180 days. Counsel contended that the applicant's trip outside the United States in 1988 was due to "emergent reasons" – and therefore did not interrupt her continuous residence in the United States – because the applicant went back to India to have a child and returned to the United States as soon as possible. Counsel also asserted that the absences of the applicant from the United States in 1987 and 1988 were "brief, casual and innocent" and therefore did not "meaningfully interrupt" her continuous physical presence in the United States during the period required for legalization under the LIFE Act. Three additional affidavits were submitted as evidence of the applicant's continuous residence in the United States during the 1980s.

On July 31, 2006, the director issued a decision denying the application. The director indicated that the information and documentation submitted in response to the NOID were insufficient to overcome the grounds for denial.

On appeal, counsel asserts that the director failed to properly evaluate the evidence submitted by the applicant and failed to give due weight to the affidavits of record. In counsel's view, the documentation is sufficient to establish that the applicant entered the United States before January 1, 1982, resided continuously in the country through May 4, 1988, and was continuously physically present in the country from November 6, 1986 through May 4, 1988. Counsel submits no additional documentation on appeal.

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 fundamental 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.

There is no contemporary documentation from the 1980s that shows the applicant to have resided continuously in the United States during the requisite period for LIFE legalization. For someone claiming to have lived in the United States since May 1980, it is noteworthy that the applicant is unable to produce a solitary piece of primary or secondary evidence during the following eight years through May 4, 1988.

The documentation submitted by the applicant in support of her claim that she entered the United States before January 1, 1982, resided continuously in an unlawful status through May 4, 1988, consists of five affidavits – two in 1991 and three in 2005 – from individuals who claim to have

employed, resided with, or otherwise known the applicant in the United States during the 1980s. All of the affidavits have minimalist formats with little personal input by the affiants. Considering the length of time they claim to have known the applicant – in most cases since 1981 – the affiants provide few details about the applicant’s life in the United States and their interaction with her over the years. Nor are the affidavits accompanied by any documentary evidence – such as photographs, letters, and the like – of the applicant’s personal relationship with the affiant(s) in the United States during the 1980s. Affiant [REDACTED] claims to have met the applicant at Disneyland in July 1981, stated that between 1981 and 2002 they spoke to each other infrequently, and acknowledged one gap of ten years when they did not speak to each other at all. Affiant [REDACTED] claims to have met the applicant in Seattle in April 1981 when the applicant visited some relatives, stated that between 1981 and 2004 they saw each other only four times, but believed the applicant resided in the United States continuously during that period. Affiant [REDACTED] a resident of India, claims that the applicant was his neighbor, that he was aware the applicant traveled to a “foreign country” in 1980, and indicates he did not see the applicant again until her returns to India to bear children in 1988 and 1990. None of the foregoing affiants claims to know first hand that the applicant maintained continuous residence in the United States from before January 1, 1982 through May 4, 1988. **In view of the substantive shortcomings discussed above, 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.**

The applicant acknowledged in her affidavit of November 22, 2005 that she was absent from the United States for more than 45 days at least once in the years 1987 and 1988. An absence of such duration interrupts an alien’s continuous residence in the United States under 8 C.F.R. § 245a.15(c)(1), 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.” In response to the NOID, counsel asserted that the applicant went to India in 1988 “for approximately 45-60 days” to give birth to her daughter because the applicant was illegally in the United States, did not have any insurance, and needed her family’s support in India. While this set of reasons may be true, they do not qualify as “emergent reasons” within the meaning of 8 C.F.R. § 245a.15(c)(1) because giving birth to a baby was not an event that “came unexpectedly into being.” The applicant was, or should have been, fully aware when she departed for India that she might not be able to return to the United States within 45 days. Thus, the applicant has failed to establish that emergent reasons, within the meaning of 8 C.F.R. § 245a.15(c)(1), prevented her return to the United States from India in 1988 within the 45-day period allowed in the regulation. For this reason as well therefore, the applicant has failed to establish her continuous residence in the United States from before January 1, 1982 through May 4, 1988, as required for legalization under the LIFE Act.

Based on the foregoing analysis of the record, 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. Accordingly, the applicant is ineligible for permanent resident status under section 1104 of 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.