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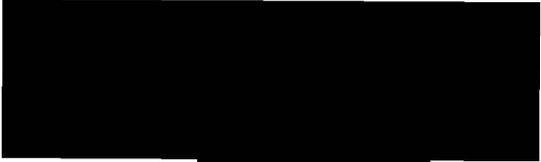
U.S. Department of Homeland Security
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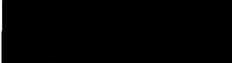


U.S. Citizenship
and Immigration
Services

L2



FILE:



Office: LOS ANGELES

Date:

FEB 04 2009

consolidated herein]
MSC 02 017 63366

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:

SELF-REPRESENTED

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 H. Vaughan
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. The decision is now before the Administrative Appeals Office (AAO) on appeal. 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, the applicant asserts that she submitted sufficient credible evidence to establish that she entered the United States before January 1, 1982, and resided continuously in the United States in an unlawful status during the requisite period for LIFE legalization.

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 Peru who claims to have lived in the United States since October 1981, filed her application for legal permanent resident status under the LIFE Act (Form I-485) on September 17, 2001.

In a Notice of Intent to Deny (NOID), dated October 21, 2004, the director indicated that the applicant had not submitted sufficient credible evidence to establish her continuous unlawful residence in the United States during the requisite period for LIFE legalization. The applicant was granted 30 days to submit additional evidence.

In response to the NOID, the applicant submitted two fill-in-the-blank affidavits from acquaintances.

On October 30, 2007, the director issued a decision denying the application on the ground that the response to the NOID was insufficient to overcome the grounds for denial. The director specifically noted that the documentation submitted by the applicant consisted of photocopies and that the applicant did not submit any originals for verification. Furthermore, the director noted that some of the documents may have been modified, thus bringing their authenticity into question. The director also stated that the affidavits in the record lacked evidentiary weight.

On appeal the applicant reiterates 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. The applicant submits originals of some of the documents previously in the record.

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 was continuously resident in the United States during the requisite period for LIFE legalization consists of the following:

- A letter of employment from [REDACTED] in Los Angeles, California, dated April 1, 1990, stating that the applicant was employed as an independent contractor "giving flyers for the office and cleaning the office" from October 1981 to December 1986, was paid in cash, and no payroll record was established.

A letter from Our Lady Queen of Angels in Los Angeles, California, dated March 20, 1990, stating that the applicant had been a member of the parish since 1981, attended church on a regular basis, and contributed to the support of the church.

Two affidavits from acquaintances, dated in 2004, claiming to have known that the applicant resided in the United States from 1986 onward.

- Medical receipts, some in photocopied form, from [REDACTED] and [REDACTED], both in Los Angeles, California, dated in 1981, 1985, 1986 and 1988, as well as a copy of prescription from [REDACTED] dated March 2, 1982.

Various merchandise and registered mail receipts, some in photocopied form, with handwritten notations of the applicant's name, dated from 1981 to 1988.

- A series of letter envelopes, some original and some copied, addressed to the applicant at various addresses in the United States from individuals in Peru, some with suspect or illegible postmarks and some with suspect stamps.

A Driving School record in the applicant's name.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each document in this decision.

The letter of employment from [REDACTED] in Los Angeles, attesting that the applicant had been employed "giving flyers for the office and cleaning the office" from October 1981 to December 1986, does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i). [REDACTED] did not provide the applicant's address during the period of employment. He also indicated that no payroll records were kept by him and that the applicant was paid in cash, thus precluding verification by United States Citizen and Immigration Services (USCIS). Nor was the letter supplemented by tax records from the employer or the applicant demonstrating that she was actually employed during any of the years indicated. Furthermore, the authenticity of the letter appears suspect because there are numerous grammatical and typographical errors. For the reasons discussed above, the employment letter has little probative value. It is not persuasive evidence that the applicant resided continuously in the United States from before January 1, 1982 through May 4, 1988, as required for legalization under the LIFE Act.

The letter from [REDACTED], the pastor at Our Lady Queen of Angels in Los Angeles, dated March 20, 1990, does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(v), which specifies that attestations by religious and related organizations (A) identify the applicant by name, (B) be signed by an official (whose title is shown), (C) show inclusive dates of membership, (D) state the address where the applicant resided during the membership period, (E) include the organization seal impressed on the letter or the letterhead of the organization, (F) establish how the author knows the applicant, and (G) establish the origin of the information about the applicant. The letter stated generally that the applicant had been a parishioner since the year 1981, but did not state where the applicant lived at any point in time during the years 1981-1988, did not indicate how and when the clergymen met the applicant, and did not state how he acquired his knowledge about the applicant. Since the letter did not comply with sub-parts (D), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), the AAO concludes that it has little probative value. The letter is not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The affidavits in the record -- dated in 2004 -- from two acquaintances who claim to have known the applicant since 1986 have fill-in-the-blank formats with little personal input by the affiants. The affiants provide very few details about the applicant's life in the United States and their interaction with her over the years. The affidavits are not accompanied by any documentary evidence -- such as photographs, letters, and the like -- of the affiants' personal relationship with

the applicant in the United States during the 1980s. Additionally, neither of the affiants claims to have known the applicant before 1986. 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.

The various merchandise receipts dated from 1981 through 1988 have handwritten notations with no date stamps or other official markings to verify when they were written. Some of the receipts bear the applicant's name and no address. Some of the receipts appear not to be genuine. For example, the service order receipt from Union Oil Company of California, dated February 1, 1984, was addressed to the applicant at [REDACTED] Los Angeles, California. However, on her Form I-687 (application for status as a temporary resident) dated March 15, 1990, the applicant listed her address at that time [REDACTED] in Los Angeles. Another receipt from [REDACTED] Los Angeles, California, dated February 1, 1986, identifies the applicant's address as [REDACTED]. The applicant did not list this address on her Form I-687 as one of her addresses in the United States during the 1980s. For the reasons discussed above, the receipts have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The copies of the medical receipts in the record, dated in 1981, 1982, 1986 and 1988, have handwritten notations of the applicant's name as the patient but no stamps or other official markings to authenticate those dates. The year of one of the receipts from [REDACTED] in Los Angeles appears to have been altered from 1989 to 1981. None of the receipts identified the applicant's address. The only original receipt in the file is dated October 15, 1986, and it has the same substantive deficiencies as the photocopied receipts. Thus, the medical receipts have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The original and photocopied letter envelopes submitted by the applicant contain at least two examples of fraud. The stamps of Codex of the Indian Kings, 1681 on the original letter envelope postmarked (according to the applicant) April 10, 1987, was not issued by the government of Peru until January 27, 1989. The stamp of the 450th Anniversary of the Founding of Trujillo on the photocopied letter envelope postmarked (according to the applicant) April 1984 was not issued by the government of Peru until March 5, 1986. *See Scott 2009 Standard Postage Stamps Catalogue*, Vol. 5, pp. 197, 200. These discrepancies undermine the credibility of the remaining letter envelopes as evidence of the applicant's continuous residence in the United States during the requisite period for legalization under the LIFE Act. Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Accordingly, the letter envelopes have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States during the requisite period for adjustment of status under the LIFE Act.

In view of the myriad evidentiary discrepancies discussed above, the AAO is also skeptical of the registered mail receipts and driving school record (the date of which is unclear in any event). As previously noted, doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See Matter of Ho, id.*

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. 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.