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FILE:

MSC 02 243 62787

Office: LOS ANGELES

Date:

FEB 25 2009

IN RE: Applicant:

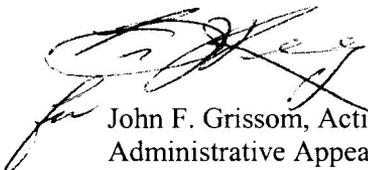
APPLICATION:

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. The file has been returned to the National Benefits Center. 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.


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, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to demonstrate that she entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

On appeal, the applicant asserts that she has submitted sufficient evidence to establish her continuous residence. The applicant does not submit additional evidence on appeal.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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).

“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.

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.

In the Notice of Intent to Deny (NOID), dated July 30, 2007, the director notified the applicant that she had failed to establish that she had resided continuously in an unlawful status during the requisite period. The director noted that the applicant submitted questionable evidence in support of her claim of continuous residence during the requisite period. Specifically, although the applicant submitted several letters and affidavits attesting to her continuous residence, the record of proceedings reflects that the applicant also submitted various letters and receipts that were either internally inconsistent and/or materially altered. The director determined, therefore, that the documentation submitted by the applicant is not credible. The director granted the applicant thirty (30) days to submit additional evidence.

In her response to the NOID, the applicant stated that she cannot be expected to have documentation since 1982, and that she has submitted twelve declarations from individuals in support of her claim. The applicant also asked that she be given the benefit of the doubt, stating that “It is possible that the officer that prepared my papers without my permission created some false documents, thinking that would help me. I condemn such action.” In effect, the applicant asserts that she cannot be held responsible for the fraud perpetuated by the purported preparer in connection with the documentation that accompanied her application.

In the Notice of Decision, dated October 24, 2007, the director denied the application noting that the applicant responded to the NOID, but failed to overcome the reasons for denial stated in the NOID.

The applicant implies that she was assisted by an individual who prepared fraudulent documentation in support of her application, to the applicant’s detriment. However, there is no remedy available for an applicant who assumes the risk of authorizing an unlicensed attorney or unaccredited

representative to undertake representations on her behalf. *See* 8 C.F.R. § 292.1. The AAO only considers complaints based upon ineffective assistance against accredited representatives. *Cf. Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988)(requiring an appellant to meet certain criteria when filing an appeal based on ineffective assistance of counsel). Furthermore, USCIS is not responsible for action, or inaction, of the applicant's representative.

At this late stage, the applicant cannot avoid the record she has created. As noted above, the record of proceeding contains fraudulent documentation which the applicant contends should, in effect, be excluded in a determination of the applicant's claim that she has admitted that the documents were prepared by a preparer whose actions the applicant now states that she condemns. The documentation submitted by the applicant in support of her application, however, is an indelible part of the record. **As such, it cannot be purged from the record.** Contrary to her assertion, the applicant is attempting to make a mockery of the immigration law because she has submitted a fraudulent documentation. The AAO will examine the entire records and make its determination of the applicant's eligibility based on the entire record as constituted.

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. The applicant submitted evidence, such as letters, affidavits, and receipts, to support her Form I-485 application. The AAO has reviewed the entire record. Here, the submitted evidence is neither probative, nor credible.

The record reflects that the applicant has submitted questionable documentation. The applicant has submitted several affidavits and letters attesting to her continuous residence. However, this evidence is unreliable as the record reflects that the applicant has submitted fraudulent documentation. For example, a document from the Los Angeles Municipal Court, dated September 25, 1986, appears to have been altered as the applicant's name and address are in a different font from the remainder of the document. It is also noted that the applicant's address on the document is [REDACTED] Los Angeles, CA 91205. The applicant does not indicate that address on her Form I-687 application, however, on her Form G-325, dated May 15, 2002, the applicant listed [REDACTED] Glendale, California, as her address from December 1993, and on her Form I-687 application, dated December 26, 2005, the applicant listed [REDACTED], Glendale, CA 91205, as her address from May 1993 to February 1996. As additional examples, the applicant's name and the dates on an invoice from [REDACTED], appear to have been altered to read "2/14/1987," as the fonts and print of her name and dates clearly differ from the remainder of the document; the date of an invoice from El IO Upholstery, which was signed on November 19, 1999, was altered to indicate that the invoice was issued on "9/20/1984;" a Police Expo & Family Security Show Ticket-Booth Order & Receipt Form, dated 2/10/1983, is clearly fraudulent as the body of the document references a 1986 Act which post-dates the receipt date; and, a Thrift Pharmacy prescription label, which shows a prescription date of 2/1/00, was altered to indicated a date of "02/08/1982," and, the fonts for that date, and the applicant's name, are clearly different from the rest of the document. Given the record of falsified evidence, the affidavits submitted are questionable, and are therefore, not probative.

The applicant has failed to submit sufficient credible evidence to demonstrate that she continuously resided in the United States in an unlawful status during the requisite period. As also noted above, the discrepancies in the record of evidence, cast considerable doubt on the applicant's claim that she resided in the United States since prior to January 1982 in an unlawful status. Accordingly, the evidence submitted by the applicant to establish her continuous residence, is deemed not credible. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). 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 is suspect and it must be concluded that the applicant has failed to establish that she continuously resided in the United States in an unlawful status during the requisite period.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, she is ineligible for permanent resident status under Section 1104 of the LIFE Act.

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