



U.S. Citizenship
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[REDACTED]

FILE: [REDACTED] Office: NEW YORK
[REDACTED] - consolidated]
MSC 02 281 62441

Date: JAN - 5 2009

IN RE: Applicant: [REDACTED]

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.

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, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant failed to establish that she entered the United States before January 1, 1982, and resided in a continuous unlawful status from then through May 4, 1988, as required under section 1104(c)(2)(B) and (C) of the LIFE Act.

On appeal, the applicant provides a brief statement.

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).

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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). *See* 8 C.F.R. 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.12(f). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

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 filed the current Form I-485, Application to Register Permanent Resident Status or Adjust Status, under the LIFE Act on July 8, 2002. The director denied the application on October 12, 2007. The applicant timely filed an appeal from that decision on October 26, 2007.¹

The AAO maintains plenary power to review this matter 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 federal courts have long recognized the AAO's *de novo* review authority. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

A review of the record reveals that, in an attempt to establish her continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant has provided the following documentation throughout the application process:

Employment Letters:

1. A letter, dated March 14, 1990, from [REDACTED] of Brooklyn, New York, stating that the applicant was working and living in her household as a babysitter from June 1986 to March 1989, earning \$ 125.00 per week.
2. A letter, dated March 23, 1990, from [REDACTED] of Los Angeles, California, stating that the applicant worked for her as a housekeeper from August 1979 to May 10, 1986, earning \$ 75.00 per week.

¹ It is noted that the record reflects that the applicant had previously filed a Form I-485 in July 1999 (SRC 00 050 52385 relates). That application was denied on May 20, 2004.

Affidavits from Acquaintances:

3. A letter, dated February 3, 1990, from [REDACTED] of Brooklyn, New York, stating that the applicant had slept in her apartment once or twice a week since May 1986. In a second letter, dated March 28, 2005, [REDACTED] (of Ozone Park, New York) states that the applicant lived with her from May 1986 to January 1990.
4. A letter, dated February 4, 1990, from [REDACTED] of Richmond Hill, New York, stating that she the applicant had been friends since she first met the applicant in October 1986.
5. A letter, dated May 16, 1990, from [REDACTED] of Los Angeles, California, stating that he met the applicant in September 1979 when she came to his home with a mutual friend to attend a social reception, at which time the applicant was living in Los Angeles until May 1986 – after that, she moved to New York.
6. A letter, dated March 27, 1990, from [REDACTED] of Los Angeles, California, stating that the applicant lived in her apartment from March 1979 to May 15, 1986 when she traveled to New York. In a second letter, dated March 24, 2004, Ms. [REDACTED] states that the applicant lived with her at two addresses in Los Angeles, California, from January 1982 through May 1986.
7. A letter, dated March 27, 1990, from [REDACTED] of Brooklyn, New York, stating that the applicant resides in Brooklyn, New York - that he had met the applicant in September 1986 her at the top of the Empire State Building in New York.
8. A letter, dated March 28, 1990, from [REDACTED] of Richmond Hill, New York, stating the applicant resides in Brooklyn, New York - that she first met the applicant in Red Hook Park in Brooklyn, New York in August 1986.
9. A letter, dated April 18, 1990, from [REDACTED] of New York, New York, stating that he and the applicant had been friends since he first met the applicant at his home in November 1986.
10. A letter, dated May 18, 1990, from [REDACTED] of Monterrey Park, California, stating that he first met the applicant in October 1979 at Our Lady Queen of Angels Church, at which time the applicant was living in Los Angeles until May 1986 – after that, she moved to New York.
11. A letter, dated September 14, 1990, from [REDACTED] of Brooklyn, New York, stating that he met the applicant some time in 1986, and that the applicant had slept in his apartment at least once a month. [REDACTED] states that the applicant accompanied him and his wife when they traveled to Guatemala by car in October 1987.

Neither of the employment letters submitted by the applicant (Nos. 1 and 2, above), comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i), in that they do not identify the exact period of employment; show periods of layoff; 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.

While the applicant has submitted numerous letters from acquaintances (Nos. 3, 3, 5, 7, 8, 9, 10, and 11, above) attesting to their knowledge of the applicant's presence in the United States since in or after May 1986, only two affiants (in Nos. 2 and 6) attest to the applicant's presence in the United States from prior to January 2, 1982.

In summary, the applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), no hospital or medical records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv), and no attestations from churches, unions or other organizations according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(v). The applicant also has not provided documentation according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi), (including, for example, money order receipts, passport entries, children's birth certificates, bank book transactions, letters of correspondence, a Social Security card, tax receipts or automobile, contract, and insurance documentation) according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (K). The documentation provided by the applicant consists solely of third-party affidavits ("other relevant documentation"). These third-party affidavits lack specific details as to how the affiants knew of the applicant's entry into the United States and details regarding how often and under what circumstances they had contact with the applicant throughout the requisite time period.

The regulation at 8 C.F.R. § 245a.12(e) provides that "[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods." Preponderance of the evidence is defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5th ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

Given the insufficiency in the evidence, the AAO determines that the applicant has not met her burden of proof. The applicant has not established, by a preponderance of the evidence, that she entered the United States before January 1, 1982, resided in this country in an unlawful status continuously since that time through May 4, 1988, and maintained continuous physical presence in the United States during the period from November 6, 1986 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Thus, 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.