

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

PUBLIC COPY



U.S. Citizenship
and Immigration
Services

L2

FILE:

MSC 02 142 61548

Office: TAMPA

Date:

JUN 30 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:

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, Tampa, 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 resided in the United States in a continuous, unlawful status from before January 1, 1982, through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, the applicant asserts that the director failed to consider all of the evidence and affidavits submitted by the applicant.¹ The applicant submitted a brief in support of her appeal with copies of additional evidence. The record is, therefore, considered complete. The AAO has reviewed all of the evidence and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.²

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 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 through May 4, 1988. *See* § 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 and is otherwise eligible for adjustment of status under section 1104 of the LIFE Act. 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). To meet his or her burden of proof, an applicant must provide evidence

¹ The record contains a Form G-28, Notice of Entry of Appearance as Attorney or Representative, filed on behalf of the applicant by [REDACTED]. However, there is no record of [REDACTED] as an attorney in the State of Florida. Therefore, he will not be recognized and the applicant will be considered to be self-represented.

² 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).

of eligibility apart from the applicant's own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.12(f). 8 C.F.R. § 245a.2(d)(6).

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.* at 80. 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 or petitioner 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).

The issue in this proceeding is whether the applicant (1) entered the United States before January 1, 1982, and (2) has continuously resided in the United States in an unlawful status for the requisite period of time.

The record reflects that the applicant filed a Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act) on November 22, 1992. The applicant claimed to have initially entered the United States as a nonimmigrant visitor in February 1980 and to have departed the United States on the following occasions during the requisite period:

- from July to August 1982 (for the birth of her son, [REDACTED], born in the United Kingdom on August 17, 1982);
- in April 1985 (to visit the United Kingdom)
- in September 1985 (to visit the United Kingdom)
- in May to June 1987 (to visit the United Kingdom)

- from October to November 1987 (for the birth of her daughter, born in the United Kingdom on November 10, 1987) and;
- in December 1987 (to visit the United Kingdom).

On February 19, 2002, the applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status pursuant to section 1104 of the Life Act (Form I-485). In connection with her Form I-485, the applicant submitted a signed Form G-235A, Biographic Information, on which she indicated that her last address outside the United States was in the United Kingdom from August 1980 to July 1981.

During her interview in connection with her Form I-485, the applicant testified that she entered the United States with a nonimmigrant visa in February 1980 and had violated her status because she overstayed her authorized period of admission. She was unable to present photocopies of the passport with which she claimed to have initially entered the United States in 1980. However, she did provide photocopies of pages from a passport issued to her on March 25, 1985 by the British Consulate General in Atlanta, Georgia, indicating the following:

- on April 25, 1985, the applicant was issued a multiple entry B-1/B-2 visa in London, which she used to enter the United States on April 25, 1985;
- on September 19, 1985, the applicant was issued a multiple entry L-2 visa in London as the dependent spouse of an intracompany transferee, which she used to enter the United States on September 24, 1985;
- on May 13, 1987, the applicant was issued a second L-2 visa in London;
- on May 19, 1987, the applicant was issued a entry visa by Kenya High Commission in London, which she used to enter Kenya on May 22, 1987;
- on December 9, 1987, the applicant's daughter, [REDACTED], was added to her passport in the United Kingdom
- on December 18, 1987, the applicant was issued a second B-1/B-2 visa in London, which she used to enter the United States on December 19, 1987.

While the record indicates that the applicant has been present in the United States, off-and-on since September 1981, the record reflects that she was in valid non-immigrant status throughout much of the requisite time period, both as a nonimmigrant visitor and as the dependent spouse of an intracompany transferee. Furthermore, there are numerous discrepancies regarding the applicant's entries into, and absences from, the United States that have not been adequately explained. In particular, it appears that the applicant entered Kenya on May 22, 1987, and did not then re-enter the United State until December 19, 1987. This information contradicts the applicant's absences noted on her Form I-687, where she stated that she was absent from the United States for one month from May 1987 to June 1987.

These discrepancies are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. 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. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The record contains no independent objective evidence to explain the above discrepancies.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that she entered the United States before January 1, 1982 and maintained continuous, unlawful residence from such date through May 4, 1988, as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, 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.