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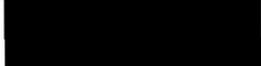
U.S. Citizenship
and Immigration
Services

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FILE:



MSC 02 248 62227

Office: NEW YORK Date:

MAR 23 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. Grisson, 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 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, counsel for the applicant asserts that the evidence demonstrates the applicant's eligibility under the LIFE Act. Counsel submits 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).

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 March 7, 2006, the director stated that the applicant had failed to submit evidence demonstrating her continuous unlawful residence in the United States during the requisite period. The director noted that the applicant had submitted a questionable application, specifically, an I-700 application (Application for Temporary Resident Status and Special Agricultural Worker) that had been denied, and questionable affidavits. The director determined that the applicant could not establish her continuous residence throughout the requisite period. The director granted the applicant thirty (30) days to submit additional evidence.

In her denial notice, dated September 28, 2006, the director noted that the applicant responded to the NOID; however, she determined that the information submitted was insufficient to overcome the stated grounds for denial. Therefore, the director denied the application based on the reasons stated in the NOID. The director determined that the applicant could not establish her continuous residence throughout the requisite period.

In his response, counsel for the applicant states that the director erred in referring to the Form I-700 application in her decision. Counsel also states that a supplemental letter, dated March 31, 2006, from [REDACTED] from Our Lady of Sorrows Church indicates that [REDACTED] knew the applicant because she has been a member of his congregation since January 1, 1981. Counsel submits additional evidence with his response to the reissued NOID.

The AAO, however, does not base its determination on information contained in the applicant's Form I-700 Application for Temporary Resident Status and Special Agricultural Worker, nor statements or documents submitted in support of the Form I-700 application, nor information revealed by the adjudication of the Form I-700 application. As discussed below, the AAO has made a *de novo* review of the evidence of record submitted in support of the applicant's Form I-485, Application to Register Permanent Resident or Adjust Status, application as it pertains to the requisite continuous residence, and bases its decision in this case solely on that record without reference to the Form I-700 application or information pertaining to that application. The AAO hereby withdraws all reference(s) to the Form I-700 application in the director's September 28, 2006 decision.

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). The AAO considers all pertinent evidence in the record, including new evidence properly submitted on appeal.¹

Upon a *de novo* review of all of the evidence in the record as it pertains to the requisite continuous residence, the AAO finds that the evidence submitted does not establish that the applicant is eligible for adjustment of status under the LIFE ACT.

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 from prior to January 1, 1982, through May 4, 1988.

The record reflects that the applicant submitted numerous affidavits, letters, and other documentation, as evidence to support her Form I-485 application. The AAO has reviewed the entire record as it pertains to the requisite period. Here, the submitted evidence is neither probative, nor credible.

The record of proceedings contains two letters from [REDACTED], dated November 11, 1991, and March 31, 2006, respectively. In his first letter, [REDACTED] states that from January 1981, until October 1987, the applicant was a member in good standing at Our Lady of Sorrows Church, located at [REDACTED], Corona, N.Y. Rev. [REDACTED] also states that the applicant resided at [REDACTED], Corona, N.Y., and in October 1987 she moved to [REDACTED] Woodside, N.Y. In his second letter (which is written on the letterhead of Our Lady of the Cenacle church, located in Richmond Hill, N.Y.), [REDACTED] reiterates the same information contained in his first letter, and adds that the applicant presently resides at [REDACTED] Woodside, New York. No other information is provided in this "supplemental" letter.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must: (1) Identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to.

The letter from [REDACTED] does not comply with the above cited regulations because it does not establish in detail that the author knows the applicant and has personal knowledge of the applicant's whereabouts during the requisite period; establish the origin of the information being attested to; and, that attendance records were referenced or otherwise specifically state the origin of the

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in this case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

information being attested to. It is also noted that although [REDACTED] states that the applicant resided at [REDACTED], Corona, N.Y., from January 1981 until she moved to Woodside., N.Y, in October 1987, the applicant indicated on her Form I-687 application that she resided in Miami, Florida, from July 1985 to April 1986. For these reasons, the letters are not deemed probative and are of little evidentiary value.

Contrary to counsel's assertion, the applicant has submitted questionable documentation. In an attempt to establish her continuous residence in the United States throughout the requisite period, the applicant provided several affidavits and letters. These documents, however, are not credible. For example, the applicant indicated on her Form I-687 application that she resided in Miami, Florida, from July 1985 to April 1986. However, she submitted affidavits from [REDACTED] and [REDACTED], attesting to the applicant's residence in the United States since January 1981 to October 1992 and that there was no period when they did not see the applicant. However, there is no indication in the record as to how these affiants saw the applicant throughout these years without any interruption whatsoever, when she resided in New York from January 1981 to June 1985, in Miami, from July 1985 to April 1986, and in New York from May 1986.

These discrepancies cast considerable doubts whether the applicant's claim that she has been in the United States since 1981 is true, and whether the affidavits and letters that the applicant submitted in support of her claimed residence are genuine. The applicant has failed to submit any reliable independent, corroborative, contemporaneous evidence to rebut the contradicting evidence in the record. 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.

Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon documents with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

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