

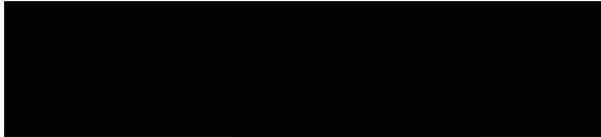


U.S. Citizenship
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FILE: [Redacted]
MSC 02 232 61258

Office: NEW YORK CITY Date: **MAY 22 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. 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: On July 24, 2007, the Director in New York City, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application, finding that the applicant failed to establish, by a preponderance of the evidence that he entered the United States before January 1, 1982, and thereafter resided in continuous unlawful status through May 4, 1988. The director noted that the applicant failed to provide evidence of her entry into the United States and that the affidavits the applicant submitted were neither credible nor amenable to verification. The director found inconsistencies between the applicant's oral testimony about her entries into the United States and other documentation in the record. The director found that the applicant was absent from the United States from December 5, 1985, to August 31, 1989, and that this absence represented a clear break in the applicant's required continuous residence and physical presence.

On appeal, counsel for the applicant does not respond to the director's bases for denial. Instead, he simply asserts that the applicant is eligible under section 1504 of the LIFE Act, Application for Family Unity Provisions to Spouses and Unmarried Children of Certain Life Act Beneficiaries because her husband was granted temporary legal permanent residence status pursuant to the CSS/LULAC program.

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and 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 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 or 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony. 8 C.F.R. 245a.12(f). Affidavits that indicate specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits that provide 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.

A LIFE Legalization applicant must also provide evidence establishing that, before October 1, 2000, he or she was a class member applicant in a legalization class-action lawsuit. *See* 8 C.F.R. 245a.14. In this case, the record reflects that the applicant applied for such class membership by submitting a "Form for Determination of Class Membership in *CSS v. Meese* [CSS lawsuit]," accompanied by a Form I-687 "Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act)." Or

Pursuant to 8 C.F.R. § 245a.31, an alien currently in the United States may obtain Family Unity Benefits under section 1504 of the LIFE Act Amendments if he or she establishes that:

- a) He or she is the spouse or unmarried child under the age of 21 of an eligible alien (as defined under 245a.10) at the time the alien's application for Family Unity benefits is adjudicated and thereafter;
- b) He or she entered the United States before December 1, 1988, and resided in the United States on such date; and
- c) If applying for Family Unity benefits on or after June 5, 2003, he or she is the spouse or unmarried child under the age of 21 of an alien who has filed a Form I-485 pursuant to subpart B.

According to counsel, the applicant qualifies under section 1504 of the LIFE Act because she was married to her husband at the time he was granted temporary legal permanent resident status. However, in order to qualify for benefit under this section, the applicant must file an application for Family Unity Benefits on a Form I-817, Application for Family Unity Benefits, with the Missouri Service Center and the correct filing fee. The applicant neither claimed nor

documented that she filed for Family Unity Benefit on a Form I-817 with her I-485, Life application as required. In fact counsel acknowledged that the applicant did not file the requisite Form I-817, but contends that the regulation provided for automatic stay of deportation and employment authorization for the spouse and unmarried children of persons granted temporary or permanent residence status. Counsel is correct in his assertion that under section 1504, the benefit sought is protection from removal. However, the applicant failed to affirmatively file for Family Unity Benefit (Form I-817) and there is no provision in the regulation for an exemption of the filing requirement. Thus, the applicant is not eligible for derivative benefit under 8 C.F.R. § 245a.31.

In this case, the applicant filed for permanent resident under section 1104 of the Act, which requires the applicant to establish that she entered the United States before January 1, 1982 and continuously resided in the country in an unlawful status through May 4, 1988. The AAO will conduct a *de novo* review of the evidence in the record to determine if the applicant is eligible for benefit under section 1104 of the Act.

The record reflects that on May 20, 2002, the applicant a native of Trinidad and Tobago, who claims to have resided in the United States since April 1981, submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On April 6, 2004, the applicant appeared for an interview based on the application.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet her burden and establish by a preponderance of the evidence, that her claim of entry into the United States before January 1, 1982, and continuous residence in the United States during the requisite period is probably true.

The documentation that the applicant submits in support of her application consists of medical documents, merchandise receipts, photographs of the applicant with notation by the applicant that the photographs were taken in Washington, DC in 1981, and other photographs with notations by the applicant that they were taken in Brooklyn in the 1980s, as well as various affidavits and letters.

The medical documentation consists of blood work done in 1984 and 1985 and can be given some evidentiary weight. Although this might be credible evidence that the applicant was physically present in the United States when that lab work was performed, it is not sufficient to establish her burden of proof that she continuously resided in the United States from before January 1, 1982, through March 4, 1988.

Regarding the merchandise receipts, two of the receipts do not bear a name or address, and cannot be attributed specifically to the applicant. Thus, the two receipts will be given no weight as evidence of the applicant's continuous residence in the United States. Although the applicant's name is written on the third receipt, no address is included and, while a receipt for purchases may indicate presence in the United States on the date issued, it has minimal weight as evidence of continuous residence.

The affidavits from [REDACTED] and [REDACTED] can be given minimal weight as evidence of the applicant's required continuous residence as they contain minimal details regarding any relationship with the applicant during the requisite period. Although the affiants assert that they have known the applicant since 1981, they fail to indicate any personal knowledge of the applicant's claimed entry to the United States during that year. While they assert that they have personal knowledge that the applicant has resided in the United States since 1981, the affiants also fail to provide sufficient relevant details regarding the circumstances of the applicant's residence during the statutory period. Lacking such relevant detail, the statements can be afforded only minimal weight as evidence of the applicant's continuous residence in the United States for the requisite period.

The fill-in-the-blank "Affidavit of Residence" dated October 6, 1989, from [REDACTED] has minimal probative value in supporting the applicant's claims that she entered the United States before January 1, 1982 and resided in the United States for the entire requisite period. While [REDACTED] states that the applicant lived with him from 1981 to 1989, he fails to submit corroborating evidence of the applicant's residence in the house, such as a lease or rental receipts. In addition, [REDACTED] provides no documentation to corroborate the fact that he, himself, lived at the mentioned address from 1981 to 1989. [REDACTED] does not indicate personal knowledge of the applicant's entry into the United States, and does not explain how, where, when, or under what circumstances he met the applicant. As the applicant's roommate of eight years, [REDACTED] fails to provide sufficient relevant details regarding the circumstances of the applicant's residence during the statutory period other than the address where he resided. Lacking such relevant details, this affidavit can be given minimal weight as evidence of the applicant's continuous residence during the requisite period.

Although the applicant has submitted several letters and affidavits in support of her application, she has not provided sufficient credible contemporaneous evidence of continuous residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality.

The record of proceedings contains other documents, including various photographs and additional merchandise receipts. This evidence is either undated or dated after May 4, 1988, and does not address the applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which she claims to have first entered the United States without inspection in April 1981, and to have resided for the duration of the requisite period in New York. As noted above, to meet her burden of proof, the applicant must provide evidence of eligibility apart from her own testimony. The applicant has failed to do so. In this case, her assertions regarding her entry are not supported by any credible evidence in the record.

Having examined each piece of evidence, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has not shown by a preponderance of the evidence that she entered into the United States before January 1, 1982, and that she resided continuously in an unlawful status for 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, the applicant has failed to establish continuous residence in an unlawful status in the United States for the requisite period, as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*.

As for counsel's claim that the applicant qualifies for Family Unity Benefits, if the applicant were to file a separate application for Family Unity and receive a denial of that application, there is no appeal of that denial.

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.