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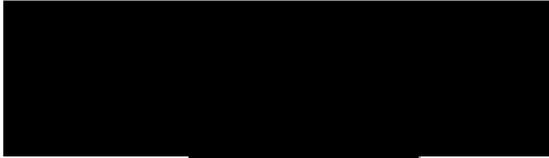
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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FILE: [REDACTED] Office: ATLANTA Date: FEB 04 2010
MSC 02 243 66452

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:



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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, Atlanta. The decision is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant did not establish that he continuously resided in the United States for the duration of the requisite period.

On appeal, the applicant states she was in the United States in 1982 and that she submitted sufficient evidence to show this. She further states the denial of her application under LIFE was incorrect.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. See section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

“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.” (Emphases added.)

“Continuous physical presence” is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: “An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of *brief, casual, and innocent absences* from the United States.” (Emphasis added.) The regulation further explains that “[b]rief, casual, and innocent absence(s) as used in this paragraph means *temporary, occasional trips abroad* as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.” (Emphasis added.) 8 C.F.R. § 245a.16(b).

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 its amenability to verification. See 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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered the United States before January 1, 1982, and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that he has not.

The pertinent evidence in the record is described below.

1. Notarized statements from [REDACTED] and [REDACTED] who state they know the applicant has resided in the United States since 1981.
2. A letter from [REDACTED] who states she knows the applicant has resided in the United States since 1985.
3. A notarized statement from [REDACTED] who states she knows the applicant has resided in the United States since 1986.
4. A notarized statement from [REDACTED] who states she knows the applicant has resided in the United States since 1987.
5. An employment letter from [REDACTED] of the Arlington Heights News Service of the Chicago Tribune in Chicago, Illinois, who states the applicant was employed by the firm from September 1981 to April 1986.
6. A letter from [REDACTED] of the Church of the Holy Spirit in Schaumburg, Illinois, who states the applicant was an active member at the parish in the early 1980's.

7. A letter from [REDACTED] of the Church of the Holy Spirit in Schaumburg, Illinois, who states the applicant was an active parishioner of the Church of the Holy Spirit since 1982.
8. A letter from [REDACTED] in Des Plaines, Illinois, who states the applicant was a catechist at St. Mary Parish in 1982.
9. The applicant's receipt dated February 10, 1986 from Photo Quetzal in Chicago, Illinois.

The persons providing statements (Items # 1 through # 5 above) claim to have known the applicant for a substantial length of time, in this case since 1981. However, their statements are not accompanied by any documentary evidence such as photographs, letters or other documents establishing the affiants' personal relationships with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the statements have little probative value. On her Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act, that she signed on January 18, 1990, the applicant was asked to list any affiliations or associations that she had in the United States such as clubs, organizations, churches unions or businesses. She did not list the Church of the Holy Spirit in Schaumburg, Illinois, or St. Mary Church in Des Plaines, Illinois. (Items # 6 through # 8). It is noted that she did claim to have been affiliated with Holy Spirit Church in Schaumburg, Illinois, and St Mary's Church in Des Plaines, Illinois, on her Form I-687 filed on December 22, 2005, but provided no dates of her association or affiliation. The applicant's receipt (Item # 9) is not sufficient evidence in itself to establish the applicant resided in the United States during the entire requisite period.

The record contains the applicant's Form I-94, Record of Arrival showing she entered the United States on November 23, 1987 as a B-2 nonimmigrant visitor at the Miami International Airport in Florida. This entry broke the continuity of any illegal continuous residence the applicant claimed during the requisite period. It is noted that on May 19, 1988, the applicant filed a Form I-539, Application to Extend Time of Temporary Stay, requesting that her temporary visit in this country be extended. On her Form I-539, she stated that her reason for coming to the United States on November 23, 1987 was to be a tourist and practice English and that she was a teacher permanently residing in Ecuador.

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. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). These inconsistencies cast doubt not only on the evidence containing the conflicts, but on all of the applicant's evidence and all of her assertions.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that he entered the United States before January 1, 1982, and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988 as required under section 1104(c)(2)(B)(i) of the LIFE Act. Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

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