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



U.S. Citizenship
and Immigration
Services

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FILE:



Office: HOUSTON

Date:

FEB 16 2010

MSC 02 242 61051

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).

IN 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.

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

The director denied the application because the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

On appeal, counsel submits a copy of the applicant's response to the Notice of Intent to Deny that was initially sent with an incorrect alien registration number.

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 and through May 4, 1988. Section 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 under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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 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 during the requisite period. Here, the applicant has failed to meet this burden.

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided the following evidence:

- Individual Income Tax Return, Form 1040A, for 1987.
- An affidavit from [REDACTED] who indicated that he has known the applicant since February 1981. The affiant indicated that he used to be a manager at [REDACTED] located in Port Arthur, Texas and the applicant and her spouse “use to work as a maintenance helper and was self employed in his wash and fold service at my washateria.”
- An affidavit notarized May 17, 2002, from [REDACTED] who indicated that he has known the applicant since 1981. The affiant indicated that he has leased his premises, [REDACTED], to the applicant and her spouse since 1981.
- A notice dated May 16, 1988, from the Internal Revenue Service regarding a social security number listed on the Form 1040A for 1987.

At the time of her LIFE interview on May 6, 2005, the applicant indicated she entered the United States in February 1981 with two other individuals who were friends of her father; she was employed by [REDACTED] at a cleaners in 1996 and 1997; resided with [REDACTED] for five years and has not spoken to [REDACTED] in two to three years; departed the United States in 1986 in order to get married in India and returned three weeks later; and departed the United States in July 1987 as her father was sick and to give birth to her child. The applicant indicated she was never issued a visa; she only used her passport which contained alterations.

At the time of her legalization interview on October 18, 2006, the applicant indicated that she entered without inspection through the Canadian border on February 19, 1981 with two other individuals who were friends of her father. The applicant indicated that she was taken to Houston, Texas where her father had arranged for her to reside with [REDACTED]. The applicant indicated that she resided with [REDACTED] from 1981 to 1989 where she cooked for the affiant and cleaned the affiant’s home. The applicant indicated that she never attended school in the United States. The applicant indicated that she met her spouse at the age of 15 through [REDACTED].

The applicant indicated she did not seek medical treatment in the United States and returned to India in 1987 when she was eight-months pregnant. The applicant indicated that her spouse met [REDACTED] in 1992 and they leased property from [REDACTED] for a dry cleaning business. The applicant indicated that she was absent from the United States in November 1986 for three weeks in order to get married and again in July 1987 to visit her ailing father and to have her child.

On June 15, 2005, the director issued a Notice of Intent to Deny, which advised the applicant that on June 13, 2005, [REDACTED] was contacted and indicated that he has known the applicant’s family for

approximately 10 to 15 years because the applicant and her family had leased a commercial building from him. The applicant was advised the affidavits submitted did not contain sufficient objective evidence to which they could be compared to determine whether the attestations were credible, plausible, or internally consistent with the record. The applicant was granted 30 days in which to submit a response. According to the director, the applicant failed to submit a response and she, therefore, denied the application on August 16, 2005.

A review of the record, however, reflects that the applicant submitted a response that was received prior to the issuance of the Notice of Decision. The applicant's response will be considered on appeal.

The applicant, in response, asserted that she resided with [REDACTED] for five years and worked in [REDACTED] washateria folding clothes. The applicant indicated that she also did housework in the affiant's home. The applicant indicated, "I would go to different storeowners which were close to his home [REDACTED] and ask them for work and they would allow me to do small chores and pay me pocket money or some goods form [sic] their stores." The applicant, however, has not provided any credible evidence to support her assertion.

The applicant indicated that she went to India for three weeks to get married and her husband has provided her with steady support since then. The applicant indicated that she entered the United States prior to January 1, 1982 and had resided continuously since that date.

The applicant also submitted an additional affidavit from [REDACTED] and [REDACTED], who amended their affidavits. [REDACTED] in his affidavit, indicates:

I have seen [the applicant] in the neighborhood since at least 25 years when she looked like a teenager. In those days, I have helped her sporadically by allowing her to clean windows and parking lot or other random chores when she did not have money for food and in return I allowed her to have some groceries. I rarely spoke to her because she did not speak much English but my store employee would request on her behalf and I would allow her to do chores. Sometimes, my employee would allow her to do such chores in my absence since he knew that I allow that.

There would be times that I would not see her for months but it was never pertinent to me since I did not know much about her. I retired in from [sic] active work and closed the store so I would occasionally see her in the neighborhood, but never talked to her. Sometime in 1992, I was approached by [REDACTED] [the applicant's husband] to rent my property to run a dry -cleaner. That is when I found out that she was married and had a baby too.

That I am sorry if I mislead anyone or misstated any of the above stated facts.

██████████ in his affidavit, indicates that he has known the applicant since February 1981, the applicant resided in his home “for several months at a time in 1981 and then for a few days at a time later,” the applicant would cook and cleaned his house and sometimes he would find some work outside of his home. The affiant indicates he introduced the applicant to her spouse and she became self-sufficient after her marriage. The affiant indicates after the applicant became a mother his contact with her was minimal and the last time he saw the applicant was in May 2002 when he gave her the affidavit.

The evidence of record submitted does not establish with reasonable probability that the applicant was already in the United States before January 1, 1982, and that she resided in a continuous unlawful status during the requisite period.

The applicant claims that she resided with ██████████ for five years. However, ██████████ in his subsequent affidavit, only attested to the applicant’s residence “for several months at a time in 1981 and then for a few days at a time later.” The affidavit also lacks probative value as the affiant did not state the place of residence where the applicant resided. In addition, in his initial affidavit, the affiant made no claim to the applicant residing with him during the requisite period. The applicant has not provided any credible evidence to establish where she was residing subsequent to 1981.

The applicant asserts that her husband has provided her with steady support since their marriage in November 1986. However, the applicant has not provided any evidence to support this assertion. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

Given the credibility issues arising from the documentation provided by the applicant, it is determined 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 and resided in this country in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant 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.