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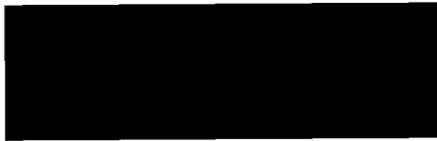
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: HOUSTON

Date:

JAN 14 2010

MSC 02 176 65314

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.

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied, reopened, and again denied by the Director, Houston, Texas, and is now before the Administrative Appeals Office 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 from then through May 4, 1988.

On appeal, counsel for the applicant submits a statement.

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 states 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 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). *See* 8 C.F.R. 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.12(f). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v), states that attestations from churches, unions, or other organizations should: identify the applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where the applicant resided during the membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

The applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status, under the LIFE Act on March 25, 2002. The director initially denied the application on December 22, 2004, subsequently reopened the proceedings and again denied the application on April 26, 2007. The applicant timely filed the current appeal from that decision on May 21, 2007.

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 issue in the proceeding is whether the applicant has established, by a preponderance of the evidence, that she entered the United States before January 1, 1982, and resided in a continuous unlawful status from then through May 4, 1988.

In an attempt to establish her continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant has provided the following documentation throughout the application process:

Church Letter:

1. A letter, dated February 6, 2006, from [REDACTED] of the Korean Presbyterian Church of Houston, Texas, stating that he/she had first met the applicant and her family when they arrived in the United States in 1981 and started attending the church.

Affidavits from Acquaintances:

2. A letter, notarized on October 10, 1990, from [REDACTED] of Houston, Texas, stating that she had known the applicant since 1981 and that the applicant traveled to Matamoros, Mexico, on August 12, 1987 “to bring back her daughter who had been assaulted while on vacation with friends.”
3. A letter, notarized on October 24, 2000, from [REDACTED] of Houston, Texas, stating that she had loaned the applicant \$70.00 in September 1987 in order to file a Form I-687 (Application for Temporary Resident Status under Section 245A of the Immigration and Nationality Act) with United States Citizenship and Immigration Services (USCIS).
4. A letter, dated January 23, 2006, from [REDACTED] of Dallas, Georgia, stating that he first met the applicant in December 1981 when she was working with her husband as a janitor; that the applicant introduced him to his current wife in 1986; and that throughout the years they have been in touch.
5. A letter, dated January 31, 2006, from [REDACTED] of Houston, Texas, stating that he/she had known the applicant since September or October of 1983.
6. A letter, dated February 2, 2006, from [REDACTED] of Houston, Texas, stating that he/she had met the applicant and her family at a supermarket in 1985, and that they told him/her they had been in the United States since 1981.

Other Documentation:

7. United States Postal Service (USPS) Customer’s Receipts, from [REDACTED] dated March 22, 1982 (showing her address as [REDACTED] Texas) and September 22, 1986 (showing her address as [REDACTED] Houston, Texas).
8. Envelopes postmarked November 9, 1983 (mailed by [REDACTED] to an address in Humble, Texas) and March 16, 1984 (from Farmers Insurance Group in Houston, Texas, to [REDACTED]).
9. Receipts from [REDACTED], issued to the applicant on December 14, 1983, and [REDACTED] in Houston, Texas, issued to [REDACTED] at Apt. [REDACTED], dated January 16, 1984.
10. A letter, dated February 7, 1989 from [REDACTED] of Houston, Texas, stating that [REDACTED] had been a patient at his office in September, October, and December 1981; February 1982; November 1983; September 1985; December 1986; and January and October 1987.

The church letter (No. 1, above) provided does not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(v) in that it is not signed by an official (whose title is shown); show inclusive dates of membership; show the address(es) where the applicant resided throughout the membership period, and establish the origin of the information being attested to (i.e., whether the information being attested to is anecdotal or comes from church membership records).

The only documentation provided by the applicant to establish her presence in the United States prior to January 1, 1982, consists of two affidavits from acquaintances (Nos. 2, and 4, above) and a physician's letter (No. 12). The letters from [REDACTED] state that she had known the applicant since 1981, but lack details as to how she first met the applicant, what their relationship was, and how frequently and under what circumstances they saw each other throughout the requisite period. Similarly, [REDACTED] states that while he met the applicant in December 1981, he fails to provide any details for concluding that he actually had direct and personal knowledge of the events and circumstances of the applicant's residence in the United States throughout the requisite period.

It is noted that in her decision to deny the application, the director specifically noted that United States Citizenship and Immigration Services (USCIS) had contacted [REDACTED] (see No. 1, above), at which time he indicated that he did not know the applicant. On appeal, the applicant submits a letter from [REDACTED] stating that he remembers receiving an anonymous call relating to a "[REDACTED]" to which he responded that he was not aware of [REDACTED], but that he was well acquainted with [REDACTED]. He states that at the time, he did not know that [REDACTED] also went by the name of [REDACTED] until the applicant later explained to him that she had. However, the record reflects that when [REDACTED] was contacted, he was asked about [REDACTED], not [REDACTED], as [REDACTED] now asserts. Furthermore, there is no evidence in the record to credibly establish where the appellation "[REDACTED]" for the applicant originates.

Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any 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. (Comm. 1988).

The regulation at 8 C.F.R. § 245a.12(e) provides that "[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods." Preponderance of the evidence is defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5<sup>th</sup> ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

It is concluded that 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 since such date through May 4, 1988, as required for eligibility for adjustment of status to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Thus, she is ineligible for permanent resident status under section 1104 of the LIFE Act.

Beyond the decision of the director, the applicant has failed to submit proof of her identity pursuant to 8 C.F.R. §245a.2(d)(1).

As always in these proceedings, the burden of proof rests solely with the applicant. Section 245a.2(d)(5) of the Act.

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