

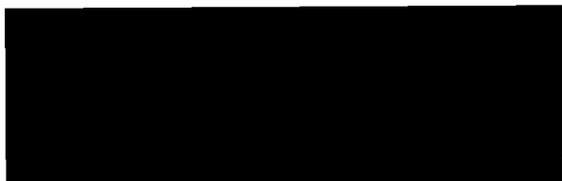
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529 - 2090



U.S. Citizenship
and Immigration
Services

L2



FILE:

MSC-02-124-62026

Office: TAMPA

Date:

MAY 04 2010

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

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, Tampa. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application, finding that the applicant had not provided credible evidence to establish that she had entered the United States prior to January 1, 1982, and thereafter continuously resided in the United States in an unlawful status for the duration of the requisite period.

On appeal, counsel states that the affidavits are sufficient to verify the applicant's claim. Counsel requested a copy of the record of proceedings under the Freedom of Information Act (FOIA). The record reflects that the FOIA request was closed on February 21, 2009 for failure to comply. (NRC2009000716). On the Form I-694, counsel indicated that a written brief or evidence would be submitted within 30 days of receipt of the record of proceedings. No additional evidence or brief has been received into the record. Accordingly, a decision will be rendered based on the evidence of record.

At issue in this proceeding is whether the applicant submitted sufficient credible evidence to meet her burden of establishing that she (1) entered the United States before January 1, 1982, and (2) has continuously resided in the United States in an unlawful status for the requisite period of time.

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 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.* at 80. 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 petitioner 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 petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (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 or petition.

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).

The documentation that the applicant submits in support of her claim to have arrived in the United States before January 1, 1982 and lived in an unlawful status during the requisite period consists of affidavits written by friends and other evidence. The AAO will consider all of the evidence relevant to the requisite period to determine the applicant’s eligibility; however, the AAO will not quote each witness statement in this decision.

The applicant claimed on her class determination form and the United States Citizenship and Immigration Services (USCIS) adjudication officer’s notes reveal that the applicant first entered the United States at Miami, Florida, using a B-2 tourist nonimmigrant visa, in November, 1981. The record does not contain a copy of the applicant’s nonimmigrant visa or other documentation establishing a legal entry before January 1, 1982.

The applicant submitted three letters from her former employer, [REDACTED] to establish her initial entry and residence in the United States during the requisite period. [REDACTED] states that the applicant was employed as a housekeeper at the motel from 1981 to 1985. [REDACTED], who is also the owner of [REDACTED], states that the applicant worked as a housekeeper at the motel from 1985 to 1988. [REDACTED] also the owner of the [REDACTED] states that the applicant was employed as a housekeeper and has been residing at the [REDACTED] since 1988. [REDACTED] stated that the applicant was paid \$140 weekly. 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. As the letters do not meet most of the requirements stipulated in the aforementioned regulation, they will be given nominal weight.

The remaining evidence consists of six envelopes and a copy of the Florida Certificate of Immunization (HRS 680-Part) for the applicant's child, [REDACTED]. The probative value of the envelopes is limited because the postmarks that are legible are not postmarked within the requisite period. The Florida Certificate of Immunization shows that the applicant's child received DTP and polio vaccinations starting from August 7, 1982 through December 9, 1983. The record bears the stamped signature of [REDACTED] Fort Lauderdale, Florida. Although it is evident that the applicant was in the United States for some part of the requisite period, the evidence submitted is insufficient to establish her continuous residence from prior to January 1, 1982 and throughout the requisite period.

On appeal, counsel states that the United States Citizenship and Immigration Services (USCIS) should have made an attempt to verify the authenticity of the information provided by the applicant. However, the applicant bears the burden of proving by a preponderance of the evidence that she resided continuously in the United States throughout the requisite period and that the letters submitted have sufficient detail to establish the truth of their assertions. USCIS is not required to contact affiants to supplement their testimony.

An applicant applying for adjustment of status under this part has the burden of proving by a preponderance of evidence that he or she is eligible for adjustment of status under section 245a of the Act. 8 C.F.R. § 245a.2(d)(5). In the instant case, the applicant has failed to submit sufficient evidence to overcome the director's denial. The insufficiency of the evidence calls into question the credibility of the applicant's claim to have entered the United States in November, 1981, and her continuous unlawful residence in the United States throughout the requisite period. The evidence submitted is insufficient to establish the applicant's 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 the requisite period.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that she entered the United States before January 1, 1982 and continuously resided in an unlawful status in the United States for the requisite period 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.