



U.S. Citizenship
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FILE: 
MSC-03-056-60976

Office: LOS ANGELES

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.

Elizabeth McCormack

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 of the Los Angeles office. The Administrative Appeals Office (AAO) originally dismissed the appeal on October 5, 2009, based upon the applicant's ineligibility due to a prior criminal conviction. On March 2, 2010, the AAO *sua sponte* reopened the proceeding and withdrew its decision dated October 5, 2009, finding that the applicant did not have a disqualifying criminal conviction. The appeal is now before the Administrative Appeals Office (AAO). The appeal will be dismissed.

Also on March 2, 2010, the AAO sent the applicant a follow-up communication informing her that additional documentation was required in order to complete the adjudication of her appeal, and requesting that the applicant provide additional evidence in support of her claim. Specifically, the AAO requested that the applicant provide evidence that she entered the United States before January 1, 1982, and that she continuously resided in the United States in an unlawful status since such date and through May 4, 1988.

In response the applicant has submitted witness statements and additional documents in support of her continuous unlawful residence in the United States during the requisite period. The AAO has considered the applicant's assertions, reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.¹

An applicant for permanent resident status under section 1104 of the LIFE Act must establish that he or she had resided continuously in the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date through May 4, 1988. *See* LIFE Act § 1104(c)(2)(B) and 8 C.F.R. § 245(a).11(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 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

¹ The AAO maintains plenary power to review each appeal 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 AAO's *de novo* authority has long been recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

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. See 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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 petitioner 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 or petition. 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she entered the United States before January 1, 1982, and that she continuously resided in the United States in an unlawful status since such date and through May 4, 1988. The documentation that the applicant submits in support of her claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of witness statements and documents. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote the witness statements in this decision. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed.

The record contains witness statements from [REDACTED] and [REDACTED] the applicant's sister. The statements are general in nature and state that the witnesses have

knowledge of the applicant's residence in the United States for all, or a portion of, the requisite period.

Although the witnesses claim to have personal knowledge of the applicant's residence in the United States during the requisite period, the witness statements do not provide concrete information, specific to the applicant and generated by the asserted associations with her, which would reflect and corroborate the extent of those associations, and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence in the United States during the requisite period. To be considered probative and credible, witness statements must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that it probably did exist and that the witness, by virtue of that relationship, does have knowledge of the facts alleged. For instance, [REDACTED] does not state how he dates his initial meeting with the applicant in the United States or how frequently he had contact with her during the requisite period. In addition, the witnesses do not specify social gatherings, other special occasions or social events when they saw and communicated with the applicant during the requisite period. The witnesses do not provide sufficient details that would lend credence to their claimed knowledge of the applicant's residence in the United States during the requisite period. For these reasons the AAO finds that the witness statements do not indicate that their assertions are probably true.

The record contains a copy of a photograph the applicant states was taken of her and her ex-husband in California on May 23, 1982. The applicant has submitted copies of three rent receipts for an apartment in Pacoima, California dated August 1, 1983, September 4, 1983 and October 3, 1983. The applicant has also submitted a California identification card and a receipt for the identification card, both dated August 9, 1983. The record contains a copy of a birth certificate for the applicant's daughter, born on September 22, 1983 in Los Angeles. The record also contains a copy of the applicant's 1983 joint tax return, as well as a 1983 W-2 form for her ex-husband. These documents are some evidence in support of the applicant's residence in the United States during some part of 1983.

The record contains a baptism certificate for the applicant's daughter, stating that the child was baptized on April 28, 1984 in Los Angeles. The record also contains a copy of the applicant's 1984 joint tax return, as well as a 1984 W-2 form for her ex-husband. These documents are some evidence in support of the applicant's residence in the United States during some part of 1984.

The record contains copies of two postmarked, stamped envelopes addressed to the applicant. The applicant has dated the postmark on these envelopes as January 2, 1987 and July 1987, respectively. However, the probative value of these envelopes is limited in that the postmark dates are not legible. The stamped envelopes do not establish the applicant's continuous residence throughout the requisite period. The record also contains a copy of a pay stub stating that the applicant work for four days during the pay period ending on August 20, 1987. This document is some evidence in support of the applicant's presence in the United States for four days in August 1987.

The applicant has submitted a copy of a vaccination record for her daughter, showing that vaccinations were administered to the child on November 22, 1983, February 9, 1984, April 9, 1984, September 26, 1985 and February 29, 1988.² This document is some evidence of the applicant's presence in the United States on November 22, 1983, February 9, 1984, April 9, 1984, September 26, 1985 and February 29, 1988.

While the documents listed above indicate that the applicant resided in the United States for some part of the requisite period, considered individually and together with other evidence of record, they do not establish the applicant's continuous residence for the duration of the requisite period.

The remaining evidence in the record is comprised of copies of the applicant's statements, the I-485 application, and a Form I-687, application for temporary resident status filed in 1990 to establish the applicant's CSS class membership. The AAO finds in its *de novo* review that the record of proceedings contains materially inconsistent statements from the applicant regarding the date of her initial entry into the United States, her absences from the United States and her residences in the United States.

In the I-485 application, the applicant states that she last entered the United States in November 1981. In a Form G-325A, biographic information sheet, the applicant lists a residence on [REDACTED] in Pacoima from January 1981.

In the I-687 application filed in 1990, the applicant states that she last came to the United States in February 1981. The applicant listed no absences from the United States during the requisite period. The applicant listed one residence on [REDACTED] in Pacoima, California from February 1981 for the duration of the requisite period.

At an interview on November 13, 2008, the applicant stated that she first entered the United States in February 1981. She states that she lived on [REDACTED] in Los Angeles from February 1981 to November 1982 then moved to San Fernando, California for the duration of the requisite period.

In a statement date March 31, 2010, the applicant states that she first came to the United States in November 1981. The applicant also states that she had one absence from the United States, in November 1982. She states that she resided on [REDACTED] in Pacoima from November 1981 for the duration of the requisite statutory period.

These contradictions are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States for the duration of the requisite period. As stated above, 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. *Matter of Ho, supra.*

² The vaccination record also lists the date of December 12, 1984, however, it is not clear if any vaccination was administered on this date.

These contradictions undermine the credibility of the applicant's claim of entry into the United States prior to January 1, 1982 and continuous residence in the United States during the requisite period.

The applicant has failed to provide probative and credible evidence of her continuous residence in the United States for the duration of the requisite period. The inconsistencies regarding the date the applicant entered the United States, resided at a particular location, and was absent from the United States are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. No evidence of record resolves these inconsistencies. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence pointing to where the truth lies.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that she is eligible for the benefit sought. The various statements currently in the record which attempt to substantiate the applicant's residence in the United States during the statutory period are not objective, independent evidence such that they might overcome the inconsistencies in the record regarding the applicant's claim that she maintained continuous residence in the United States throughout the statutory period, and thus are not probative.

The record reveals that on April 2, 1999, removal proceedings were instituted against the applicant, on the basis that she is deportable and removable pursuant to section 212(a)(6)(A)(i), as an alien present without being admitted. On July 6, 2004, the applicant was granted until August 6, 2004 to voluntarily depart the United States, with an alternate order of removal to Mexico. On September 30, 2005, the Board of Immigration Appeals (BIA) dismissed the applicant's appeal. On February 24, 2006, the United States Court of Appeals for the Ninth Circuit dismissed the applicant's petition for review. On March 1, 2006, the BIA reopened and remanded the record to the Immigration Court for further proceedings, based upon an approved immigrant visa. On January 31, 2008, the removal proceedings were administratively closed.

Therefore, based upon the foregoing, the applicant has failed to establish continuous residence in an unlawful status in the United States for some time prior to January 1, 1982 and through May 4, 1988. The applicant is, therefore, not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act. The appeal is dismissed on this basis.

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