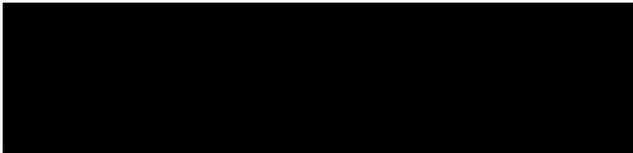


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



PUBLIC COPY



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Date: **JUL 20 2011** Office: New York

File: 

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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Thank you,

A handwritten signature in black ink, appearing to read "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 District Director, New York District, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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

On appeal, the applicant asserts she submitted sufficient credible evidence to establish her eligibility for permanent resident status under the LIFE Act. The applicant previously requested a copy of the record of proceeding. Her request for the copy of the record of proceeding was processed on September 27, 2010.¹

An applicant for permanent resident status 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. 8 C.F.R. § 245a.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 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 or 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 first issue to be addressed in this proceeding is whether the applicant established that she: (1) entered the United States before January 1, 1982 and (2) has 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 declarations written by friends and family, copies of postmarked envelopes, photographs and receipts.

The declarations of [REDACTED] all contain statements that the declarants have known the applicant for all or part of the requisite period and that they attest to the applicant being physically present in the United States during the same period. These declarations fail, however, to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.

None of the declarations 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 during the time addressed in the declarations. To be considered probative and credible, witness affidavits 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 the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

The applicant submitted a letter written by a coordinator at the [REDACTED] [REDACTED] stating the applicant participated in two retreats at the center in 1983. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must: (1) identify the applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during the membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to. The letter fails to state the address where

the applicant resided, nor establish how the author knows the applicant or the origin of the information being attested to. The letter will be given no weight.

In her decision, the director noted that the applicant initially stated on her Form I-687 that she arrived in the United States on November 15, 1981, but at an interview, she claimed she first entered the United States on August 12, 1980.

The director further noted that the applicant stated at an interview, that she was absent from the United States for approximately three months, in contradiction to her assertion on her Form I-687 application that she had been outside the United States only one month during the requisite period.

On appeal, the applicant indicated that a preparer made an error on the Form I-687 regarding the applicant's initial date of entry. She further asserts that the interviewer confused her, and she had difficulty recalling dates from 29 years ago.

The AAO is not basing its decision on the inconsistencies noted by the director. Rather, the AAO finds that the applicant failed to establish her continuous residence throughout the requisite period.

The applicant submitted photographs that are not verifiable and hence have no probative value. The applicant submitted copies of postmarked envelopes that are either illegible or dated after the requisite period.

Finally, the applicant submitted additional evidence that is dated after the requisite period and therefore, has no probative value.

The applicant has, therefore, failed to establish that she resided in continuous unlawful status in the United States from before January 1, 1982 through May 4, 1988, 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.

Beyond the decision of the director, the applicant has failed to establish her eligibility for permanent resident status under the LIFE Act due to her criminal history.

An applicant who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to permanent resident status under the provisions of the LIFE Act. Section 1104 (c)(2)(D)(ii) of the LIFE Act; 8 C.F.R. §§ 245a.11(d)(1) and 18(a)(1). The regulations provide relevant definitions at 8 C.F.R. § 245a.

The record contains court documents that reflect the applicant has been convicted of the following misdemeanor offenses:

- Court Case [REDACTED] in the White Plains City Court for a violation of section 110-155.25, attempted petit larceny, of the New York Penal Code, which resulted in the applicant being convicted on August 24, 2000.
- Court Case [REDACTED] in the New York City Criminal Court, Bronx County, for a violation of section 155.25 of the New York Penal Code, petit larceny, which resulted in the applicant being convicted on April 19, 2002.
- A violation of section 2C:20-11B of the New Jersey Code, shoplifting, in the Municipal Court of East Rutherford, which resulted in the applicant being convicted on May 14, 1997.

Because of her three misdemeanor convictions, the applicant is ineligible for adjust to permanent resident status under the LIFE Act pursuant to 8 C.F.R. § 245a.18(a)(1). Within the provisions of the LIFE Act, there is no waiver available to an applicant convicted of a felony or three or more misdemeanors committed in the United States.

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