

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, D.C. 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

22

FILE:



Office: NEW YORK Date:

MAY 01 2007

MSC 01 314 60396

IN RE:

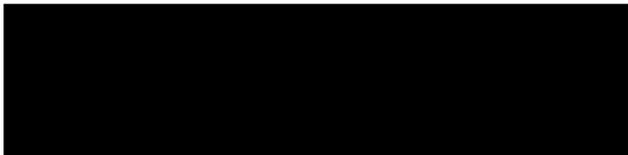
Applicant:



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. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, 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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant's testimony was at variance with the information initially provided on her Form I-687 application, thereby casting credibility issues on her claim to have continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. As such, the director denied the application.

On appeal, counsel asserted that the applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel asserted, "[t]he applicant is a 73 year old woman under medical care and medication, which explains the lapse in the testimony." Counsel asserted that a brief would be submitted within 30 days to this office. Subsequently, counsel submits an additional letter dated May 9, 2005 from [REDACTED] who indicated that the applicant is currently enrolled at the facility for psychiatric treatment. [REDACTED] asserted that the applicant is taking psychiatric medication and is attending a CSS program.

"Continuous residence" is defined in the regulations at 8 C.F.R. § 245a.15(c)(1), as follows:

Continuous residence. An alien shall be regarded as having resided continuously in the United States if:

- (1) No single absence from the United States has exceeded *forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed. [Emphasis added.]

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 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).

At the time of her LIFE interview on January 26, 2004, the applicant submitted a letter dated January 12, 2004, from [REDACTED], attending psychiatrist at the Ambulatory Behavioral Health Services in Elmhurst, New York. [REDACTED] indicated that the applicant had been enrolled in the Ambulatory Health Services since May 9, 1994 for treatment of a psychiatric condition and was being prescribed medication.

Here, the submitted evidence is not relevant, probative, and credible. In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence:

- A receipt dated June 7, 1986 from Best for Less Furniture in Jamaica, New York, which listed the applicant's address as [REDACTED] Jackson Heights, New York.
- A copy of her Columbian passport, which indicates that on January 23 1985, she was issued a B-1/B-2 non-immigrant visa, which expired on April 22, 1985. The record reflects that the applicant lawfully entered the United States on February 10, 1985 as a non-immigrant visitor.
- An envelope postmarked January 27, 1988 and addressed to the applicant at [REDACTED] Jackson Heights, New York.
- A 1985 wage and tax statement from [REDACTED] in Richmond Hill, New York, which listed the applicant's address as [REDACTED] Richmond Hill, New York.
- A 1988 wage and tax statement from [REDACTED] in New York, New York along with an employment letter dated October 5, 1989 from [REDACTED] plant manager of [REDACTED] [REDACTED] indicated that the applicant has been employed with the company for two and a half years.
- A marriage certificate, which occurred on March 8, 1985 in New York.
- An affidavit notarized September 28, 1989 from [REDACTED] of [REDACTED] Elmhurst, New York, who indicated that the applicant resided and worked for her as a housekeeper and babysitter from November 1980 to June 1987. The affiant asserted the applicant then moved to [REDACTED] Jackson Heights.

On May 28, 2004, the director issued a Notice of Intent to Deny, informing the applicant that the submitted evidence did not establish her continuous unlawful residence in the United States during the requisite period.

The applicant was advised of inconsistencies between her documents, application, and testimony at the time of her interview. Specifically:

1. The only evidence to establish her residence prior to her February 10, 1985 entry into the United States was an affidavit from [REDACTED]. This affidavit contradicted her testimony in which she stated that her first job in the United States was in a factory for three years and that her employment as a housekeeper in Ronnhonoma, New York did not occur until several years later.
2. The applicant first indicated that she resided on [REDACTED] in New York from 1980 until 1988. The applicant then amended her testimony to indicate residence on [REDACTED] for five months and at [REDACTED] for the next ten years.
3. The applicant indicated that since first arriving in the United States she had departed only once. However, on her Form I-687 application, the applicant listed three separate departures from the United States; October 1983 to November 1983, December 1984 to February 1985 and December 1987 to January 1988.

The director noted that the applicant's last absence (December 28, 1987 to January 30, 1988) exceeded 33 days and was not considered to be "brief" as outlined in 8 C.F.R. § 245a.16(b). The director also noted that the applicant had "not shown any unforeseen, emergent reasons for an absence of this duration."

The director also noted that the applicant had provided two notices regarding her English as a Second Language courses, indicating she had attended different schools at the same time. The applicant submitted a notice from York College dated June 23, 1997 and a certificate from Queens Educational Opportunity Center dated June 25, 1997. The director noted that Queens Educational Opportunity Center was not an accredited institution and, therefore, the certificate had no probative value.

The applicant was granted 30 days in which to respond to the notice. The applicant, however, failed to respond.

The AAO does not view the documentation submitted as substantive enough to support a finding that the applicant entered and began residing in the United States before January 1, 1982 through February 9, 1985. The applicant claimed that she has been residing in the United States since 1980, but only provides one affidavit from [REDACTED], who indicated that the applicant resided at her home at [REDACTED] until June 1987.

The AAO has considered the letters from [REDACTED] however, the letters lack evidence to support counsel's claim that the applicant's medical condition or the medication she was taken affected her ability to remember. Furthermore, at the time the applicant filed her Form I-687 application on November 8, 1989, she indicated at item 43 that she was not afflicted with any mental disorder. These factors coupled with the fact that the applicant: 1) claimed on her Form I-687 application to have resided at [REDACTED] until May 1986; submitted a 1985 wage and tax statement which reflected a different address of residence; and 3) claimed on her Form G-325 Biographic Information to have resided at [REDACTED] commencing in June 1986 raises serious questions about the credibility of her claim and the authenticity of [REDACTED] affidavit.

As conflicting statements have been provided, it is reasonable to expect an explanation from the affiant in order to resolve the contradictions. However, no statement has been submitted by the affiant to resolve contradicting affidavit. As such, it is determined that the affidavit from [REDACTED] is not plausible, credible, and consistent both internally and with the other evidence of record. In addition, no declaration

from her husband has been provided in an effort to establish her residence and presence in the United States from March 8, 1985 through May 4, 1988.

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).

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 was in a continuous unlawful status up to her *alleged re-entry* on February 10, 1985.

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 applicant has failed to meet this burden. Accordingly, the applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

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