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Washington, DC 20529

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U.S. Citizenship  
and Immigration  
Services



Handwritten initials: KA

FILE:



Office: Los Angeles

Date: **AUG 04 2004**

IN RE:

Applicant:



PETITION: 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.

Handwritten signature: Robert P. Wiemann

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Los Angeles, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

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

On appeal, the applicant asserts she has submitted sufficient evidence establishing her having resided continuously in the U.S. since 1981.

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).

When something is to be established by a preponderance of the evidence it is sufficient that the proof establish that it is probably true. *See Matter of E-- M--*, 20 I&N Dec. 77 (Comm. 1989).

Although CIS 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In an attempt to establish continuous unlawful residence since prior to January 1, 1982, the applicant submits the following:

- a Form I-687 Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act, which was signed by the applicant on September 5, 1995;
- An affidavit from [REDACTED] who asserts that, based on her personal knowledge, she is able to attest to the applicant having resided in Arleta, California from 1981 to 1984, and in Pacoima, California since 1984;
- An affidavit from [REDACTED] who attests to the applicant having resided in Arleta, California from 1981 to 1984, and in Pacoima, California since 1984. The affiant bases her knowledge on the fact that the applicant resided in the affiant's house from the time the applicant first arrived from Mexico until 1984;

- An affidavit from [REDACTED] who asserts that, based on his personal knowledge, he is able to attest to the applicant having resided in Arleta, California from 1981 to 1984, and in Pacoima, California since 1984;
- An affidavit from [REDACTED], who asserts that, based on his personal knowledge, he is able to attest to the applicant having resided in Arleta, California from 1981 to 1984, and in Pacoima, California since 1984;
- An affidavit from [REDACTED] who asserts that, based on her personal knowledge, she is able to attest to the applicant having resided in Arleta, California from 1981 to 1984, and in Pacoima, California since 1984;
- An affidavit from [REDACTED] who asserts that, based on her personal knowledge, she is able to attest to the applicant having resided in Arleta, California from 1981 to 1984, and in Pacoima, California since 1984. The affiant further asserts that, except for a brief departure from the U.S. in 1986 in order to get married, the applicant has resided continuously in the U.S. since 1981;
- An affidavit from [REDACTED] who asserts that, based on his personal knowledge, he is able to attest to the applicant having resided in Pacoima, California since 1984;
- An affidavit from [REDACTED] who asserts that, based on her personal knowledge, she is able to attest to the applicant having resided in Arleta, California from 1981 to 1984, and in Pacoima, California since 1984;
- An affidavit from [REDACTED] who attests to the applicant having resided in Arleta, California from 1981 to 1984, and in Pacoima, California since 1984. The affiant bases his knowledge on the applicant having been a friend of his family;
- An affidavit from [REDACTED] who attests to the applicant having resided in Pacoima, California since 1984. The affiant identifies himself as being the applicant's brother, and indicates the applicant lived with him at his house in Pacoima from 1984 to 1986;
- An affidavit from [REDACTED] who attests to the applicant having departed the U.S. for Mexico from September 1, 1986 to October 30, 1986 in order to get married, and having departed again for Mexico from July 28, 1987 to August 28, 1987 for 1 month in order to give birth;
- An employment verification form letter from [REDACTED] indicating the applicant worked as a housekeeper at her house at [REDACTED] from June 1984 to April 1985; and
- An unnotarized affidavit from [REDACTED] who attests to the applicant having resided in the U.S. since April 1981. The affiant bases her knowledge on having been married to the applicant's uncle, [REDACTED]

As stated above, the inference to be drawn from the documentation provided shall depend on the *extent* of the documentation. In *Matter of E-- M--*, *supra*, the applicant had established eligibility by submitting (1) the original copy of his Arrival-Departure Record (Form I-94), dated August 27, 1981; (2) his passport; (3) affidavits from third party individuals; and (4) an affidavit explaining why additional original documentation is unavailable.

The applicant in this case has not submitted *any* contemporaneous documentation to establish her presence in the U.S. since 1981 -- the time she claimed to have commenced residing in the U.S. through May 4, 1988. Nor does she endeavor to account for or offer any explanation as to *why* she has been unable to provide contemporaneous evidence to support her claim.

Along with her LIFE application, the applicant submitted an affidavit (previously referenced in this decision) from [REDACTED] which attests to the applicant having departed the U.S. for Mexico from September 1, 1986 to October 30, 1986 in order to get married. As already indicated, an applicant for permanent residence under the LIFE Act must establish continuous residence in the U.S. from prior to January 1, 1982 through May 4, 1988. Pursuant to 8 C.F.R. § 245a.15(c)(1), an alien is regarded as having resided continuously in the United States if no single absence from the United States has exceeded *forty-five (45) days* between January 1, 1982, and May 4, 1988. In this case, the alien's absence from September 1, 1986 to October 30, 1986 exceeded the allowable 45 day limit for such absences.

On the applicant's I-687 application, she had originally listed October 30, 1986 as the date of her return to the U.S. This would conform to the date provided in the affidavit from [REDACTED]. However, upon examination, it appears that the applicant subsequently attempted to alter the October 30, 1986 date of return on her I-687 application to read October 10, 1986. The applicant's failure to provide an explanation for this subsequent alteration of her application significantly diminishes the credibility of her documentation and claim.

Given her absence from the U.S. in excess of 45 days, her inability to account for her alteration of data in connection with this absence, and her failure to provide any contemporaneous documentation to support her claim to continuous presence in the U.S. during the period in question, the applicant has failed to establish having resided in continuous unlawful status in the United States from prior to January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, 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.