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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

[Redacted]

FILE: [Redacted] Office: Los Angeles

Date:

IN RE: Applicant: [Redacted]

DEC 03 2004

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:

[Redacted]

EXHIBIT COPY

[Faint stamp]

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.

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

The district director determined that the applicant had not established that she resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act. This decision was based on the district director's conclusion that the applicant had exceeded the forty-five (45) day limit for a single absence as set forth in 8 C.F.R. § 245a.15(c)(1)(i).

On appeal, the applicant reiterates her claim of continuous residence in the United States from prior to January 1, 1982 through May 4, 1988.

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).

"Continuous unlawful residence" is defined at 8 C.F.R. § 245a.15(c)(1), as follows: An alien shall be regarded as having resided continuously in the United States if 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.

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 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 applicant is a class member in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (INA) on April 16, 1990. At part #33 of the Form I-687 application where applicants were asked to list all residences on the United States from the date of their first entry, the applicant listed the following address: [REDACTED] from December 1981 to the date the Form I-687 application was submitted. Furthermore, at part #35 of the Form I-687 application where applicants were asked to list all absences from the United States beginning from January 1, 1982, the applicant listed only one absence from this country when she traveled to India to "visit family" from May 20, 1987 to June 27, 1987.

With the Form I-687 application, the applicant included a single affidavit of residence signed by [REDACTED] in support of her claim of continuous residence in the United States since prior to January 1, 1982. In her

affidavit, [REDACTED] stated that the applicant had lived with her providing house keeping services at 882 N. Marengo in Pasadena, California since her arrival in the United States in 1981 to May, 2, 1990, the date the affidavit was executed. However, [REDACTED] testimony that the applicant resided with her at [REDACTED] in Pasadena, California during the requisite period directly conflicts with and contradicts the applicant's claim that she resided at [REDACTED] in Pasadena, California in this same period. The applicant failed to offer any explanation for this discrepancy.

Subsequently, on April 12 2002, the applicant filed her Form I-485 LIFE Act application. It must be noted that the applicant failed to submit any new and additional evidence of residence in the period from prior to January 1, 1982 to May 4, 1988 with the LIFE Act application.

The record shows that the applicant subsequently appeared for her interview relating to the LIFE Act application at the Los Angeles, California District Office of the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services, or CIS) on October 23, 2003. During the interview, the applicant provided a sworn statement in which she stated that she left the United States in the period from May 1987 to June 1987, and that she returned to this country by crossing the border via Tijuana, Mexico. The applicant indicated that she was absent from this country again in 1990, returning to the United States with a visa, and that she had not been absent since.

In addition, the applicant provided the following new documents in support of her claim of continuous residence in this country:

- A letter signed by [REDACTED] who provided her address and indicated that she had personal knowledge that the applicant resided in the United States since the late 1980's when she inquired regarding the applicant's availability to provide care to her aging mother; and,
- An letter signed by [REDACTED] that bears the address of this institution. [REDACTED] stated that the applicant had taken an active and valuable part in the feelowship of our mosque since 1986.

However, neither [REDACTED] provided any testimony relating to the applicant's residence in the United States prior to the late 1980's and 1986, respectively. Without such testimony, neither letter can be considered as sufficient to corroborate the applicant's claim of continuous residence in this country since prior to January 1, 1982.

In the notice of intent to deny issued on December 17, 2003, the district director questioned the veracity of the applicant's claimed residence in the United States. Specifically, the district director stated that the applicant had testified that she "...departed from the United States in 1987 to go back to your country of India to live and did not return until 1990," at her interview on October 23, 2003. However, a review of the applicant's testimony, as well as her sworn statement, finds no support for the district director's conclusion regarding her absence in the period from May 1987 to June 1987. As noted above, the applicant listed only one absence from this country when she traveled to India to "visit family" from May 20, 1987 to June 27, 1987 at part #35 of her Form I-687 application. The explanation offered by the applicant in rebuttal to the notice of intent to deny that any purported discrepancy relating to the length of her absence from this country is the result of a misunderstanding is considered reasonable under these circumstances and appears to have credibly resolved the

questions raised by the district director regarding the length of applicant's absence from the United States. As such, the remaining issue to be examined in this proceeding is whether the applicant has submitted sufficient evidence to establish continuous unlawful in this country from prior to January 1, 1982 to May 4, 1988.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center [or other office] does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

The applicant has failed to submit any contemporaneous documentation to establish presence in the United States from the time she claimed to have commenced residing in this country through May 4, 1988. In light of the fact that the applicant claims to have continuously resided in the United States since at least December 1981, this inability to produce any contemporaneous documentation to support her claim of residence raises serious questions regarding the credibility of the claim. The applicant submitted only a single piece of evidence, the affidavit of [REDACTED] to support of her claim of residence in this country from December 1981. The credibility of the applicant's claim of residence is further diminished by the contradiction between the applicant's testimony regarding her address of residence in this country since December of 1981 and the conflicting testimony provided by [REDACTED] in her affidavit who stated that the applicant resided at a completely different address with a differing zip code during the same period.

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. It is incumbent upon the 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).

Given the complete absence of contemporaneous documentation pertaining to this applicant, outright and direct contradictions and conflicts in testimony, and reliance upon supporting documentation with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988, as required.

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