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**U.S. Citizenship
and Immigration
Services**



LA

FILE:

Office: Los Angeles

Date: **JUN 16 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.

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 that she has maintained continuous physical presence in the U.S. since prior to January 1, 1982 through May 4, 1988, and that she is a person of good moral character.

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 July 13, 1990;
- Photocopies of separate, individual check stubs/earnings statements from Salvador Sandoval of Lathrop, California, which carry dates from March 9, 1981 through November 20, 1987;
- An undated employment letter from [REDACTED] of [REDACTED] of Ontario, California, indicating that the applicant had been employed by that firm since January 1988;

- A form affidavit from [REDACTED] attesting to the applicant having resided in Manteca, California, from March 1981 to December 1987, and in Pomona, California, since January 1988. The affiant bases her knowledge on having been a close acquaintance of the applicant;
- An affidavit from [REDACTED] attesting to the applicant having resided in Manteca, California, from March 1981 to December 1987, and to having resided in Pomona, California, since early 1988. The affiant further asserts that the applicant and her spouse were engaged in landscaping employment;
- An affidavit from [REDACTED] attesting to the applicant having resided in Manteca, California, from March 1981 to December 1987. The affiant further asserts that the applicant and her spouse were engaged in landscaping employment; and
- An affidavit from [REDACTED], attesting to the applicant having resided in Manteca, California, from March 1981 to December 1987. The affiant bases his knowledge on his having been the applicant's landlord; and
- An affidavit from [REDACTED] attesting to the applicant having departed the U.S. on May 14, 1987 and having reentered on May 29, 1987.

As stated above, the inference to be drawn from the documentation provided shall depend on the *extent* of the documentation. The extremely minimal evidence furnished cannot be considered extensive, and in such cases a negative inference regarding the claim may be made as stated in 8 C.F.R. § 245a.2(12)(e).

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. Unlike the alien in *Matter of E-M-*, the present applicant does not offer any explanation as to *why* he has been unable to provide additional evidence to support his claim. Furthermore, the officer who interviewed the applicant in *Matter of E--M--* recommended approval of the application, albeit, with reservations and suspicion of fraud. In the present case, however, the officer interviewing the applicant regarding her claim to LIFE eligibility recommended denial of the application.

The record reflects that the applicant has a daughter who was born in Mexico on September 19, 1984. On her I-687 application, the applicant failed indicate that she had been out of the U.S. during the period she had given birth to her daughter. Only when this fact was pointed during her interview did the applicant respond that she had neglected to mention this information and that she had been out of the U.S. for one month at the time of her daughter's birth. The applicant's significant omission of the fact that she had departed for Mexico prior to her daughter's birth considerably diminishes the credibility of her claim to have continuously resided in the U.S. during the period in question.

The check stubs/earnings statements from Salvador Sandoval are not made out to the applicant or to any specific individual. In the absence of such information, these photocopied documents can have no probative or evidentiary value.

Most of the affidavits submitted by the applicant fail to specify the basis of the affiant's knowledge or how the affiants became acquainted with the applicant. The employment letter from [REDACTED] of Cal-Cover is undated, does not provide [REDACTED] title or his connection within the firm, and fails to mention the applicant's actual duties with Cal-Cover. Nor does the letter indicate the specific date the applicant's employment at Cal-Cover commenced. It should also be noted that several of the affidavits contain language, including grammatical and typographical errors, that is almost identical. Such documents appear to have been prepared *for* the affiants rather than *by* the affiants, and do not have the appearance of originating from the affiants' personal knowledge.

Given the absence of contemporaneous documentation pertaining to this applicant, along with the applicant's reliance on affidavits which do not meet basic standards of probative value, it is concluded that she has failed to establish continuous residence in an unlawful status 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.