

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services

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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: Phoenix

Date: [Redacted]

IN RE: Applicant: [Redacted]

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:
[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has 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, Phoenix, Arizona, 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 demonstrated that she had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. The district director further determined that the applicant failed to establish that she satisfied the "basic citizenship skills" required under section 1104(c)(2)(E) of the LIFE Act. Therefore, the district director concluded the applicant was ineligible for permanent resident status under the LIFE Act and denied the application.

On appeal, the applicant reiterates her claim to have resided in the United State since 1980.

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. 8 C.F.R. § 245a.12(e). When something is to be established by a preponderance of evidence it is sufficient that the proof only establish that it is *probably* true. *See Matter of E-- M--*, 20 I. & N. Dec. 77 (Comm. 1989). Preponderance of the evidence has also been defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5th ed. 1979).

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).

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 or about May 8, 1991. 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 May 1981 to January 2, 1990, the date the application was executed. The applicant failed to include any documentation to support her claim of continuous residence in this country for the claimed period with her Form I-687 application.

Subsequently, on June 6, 2002, the applicant filed her LIFE Act application. In support of her claim to have continuously resided in the United States from May 1981 to May, 4, 1988, the applicant submitted the following documents:

- An affidavit signed by [REDACTED] who provided her current address and telephone number and stated that the applicant lived with her at her former residence at [REDACTED]

from May 1981 until approximately May 1987. [REDACTED] declared that she paid the applicant a weekly salary for providing childcare to her sons during this period;

- Photocopies of a California State Identification Card and corresponding receipt issued to the applicant on November 4, 1987; and,
- A State of California Certificate of Live Birth for the applicant's daughter that shows her date of birth as March 31, 1988.

A review of the evidence submitted by the applicant clearly demonstrates that she has established continuous residence in this country for the period from November 1987 to May 4, 1988. However, the applicant provided only a single affidavit in support of her claim of continuous residence in the United States for the period from prior to January 1, 1982 to October 1987. As previously discussed, the applicant listed [REDACTED] as her sole residence in the United States from May 1981 to January 2, 1990 on the Form I-687 application. This information directly contradicts [REDACTED] testimony within her affidavit that the applicant resided with her at [REDACTED] from May 1981 until approximately May 1987. The applicant has made no attempt to provide an explanation for this direct contradiction. These factors raise serious questions regarding the authenticity and credibility of the applicant's claim of residence in this country from January 1, 1982 to October 1987 and the sole document submitted by her in support of that claim. Given these circumstances, it is concluded that affidavit of residence signed by [REDACTED] is of questionable probative value.

The applicant has submitted no contemporaneous documentation to establish presence in the U.S. from the time she claimed to have commenced residing in the United States through October 1987. In light of the fact that the applicant claims to have continuously resided in this country since at least May 1981, this inability to produce more than an absolute minimum of contemporaneous documentation to support her claim of residence raises serious questions regarding the credibility of the claim. The credibility of the applicant's claim of residence is further diminished by the direct contradiction between her purported address as listed by the applicant on her Form I-687 application and the address provided for the applicant in the affidavit signed by [REDACTED]. Furthermore, the applicant's statement on appeal that she has resided in the United States since 1980 contradicts her own previous testimony and only serves to further undermine the credibility of her claim of residence in this country.

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 completely minimal amount of contemporaneous documentation pertaining to this applicant, an outright and direct contradiction and conflict in testimony, and reliance upon a supporting document 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 October 1987.

Under section 1104(c)(2)(E)(i) of the LIFE Act (“Basic Citizenship Skills”), an applicant for permanent resident status must demonstrate that he or she:

- (I) meets the requirements of section 312(a) of the Immigration and Nationality Act (8 U.S.C. 1423(a)) (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States); or
- (II) is satisfactorily pursuing a course of study (recognized by the Attorney General) to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

Under section 1104(c)(2)(E)(ii) of the LIFE Act, the Attorney General may waive all or part of the above requirements for aliens who are at least 65 years of age or developmentally disabled.

The applicant, who is neither 65 years old nor developmentally disabled, does not qualify for either of the exceptions in section 1104(c)(2)(E)(ii) of the LIFE Act. Nor does he satisfy the “basic citizenship skills” requirement of section 1104(c)(2)(E)(i)(I) of the LIFE Act because he does not meet the requirements of section 312(a) of the Immigration and Nationality Act (INA). An applicant can demonstrate that he meets the requirements of section 312(a) by “[s]peaking and understanding English during the course of the interview for permanent resident status” and answering questions based on the subject matter of approved citizenship training materials, or “[b]y passing a standardized section 312 test . . . by the Legalization Assistance Board with the Educational Testing Service (ETS) or the California State Department of Education with the Comprehensive Adult Student Assessment System (CASAS).” 8 C.F.R. § 245a.3(b)(4)(iii)(A)(1) and (2).

Pursuant to 8 C.F.R. § 245a.17(b), the applicant was interviewed twice in connection with her LIFE application, on February 11, 2003 and again on October 28, 2003. On both occasions, the applicant failed to demonstrate a minimal understanding of English and minimal knowledge of United States history and government. Furthermore, the applicant has not provided evidence of having passed a standardized citizenship test, as permitted by 8 C.F.R. § 312.3(a)(1).

The remaining question, therefore, is whether the applicant satisfies the alternative “basic citizenship skills” requirement of section 1104(c)(2)(E)(i)(II) of the LIFE Act. The “citizenship skills” requirement of section 1104(c)(2)(E)(i)(II) is defined by regulation in 8 C.F.R. § 245a.17(2) and (3). As specified therein, an applicant for LIFE Legalization must establish that:

He or she has a high school diploma or general education development diploma (GED) from a school in the United States. . . . 8 C.F.R. § 245a.17(2), or

He or she has attended, or is attending, a state recognized, accredited learning institution in the United States, and that institution certifies such attendance. The course of study at such learning institution must be for a period of one academic year (or the equivalent thereof according to the standards of the learning institution) and the curriculum must include at least 40 hours of instruction in English and United States history and government. . . . 8 C.F.R. § 245a.17(3).

The applicant in this case does not have a high school diploma or a GED from a United States school, and therefore does not satisfy the regulatory requirement of 8 C.F.R. § 245a.17(2).

For the reasons discussed above, the applicant does not satisfy the “basic citizenship skills” requirement of section 1104(c)(2)(E)(i)(II) of the LIFE Act because he has failed to demonstrate that she “is satisfactorily

pursuing a course of study (recognized by the Attorney General) to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.”

As previously discussed, the applicant failed to meet the “basic citizenship skills” requirement of section 1104(c)(2)(E)(i)(I) of the LIFE Act because at her two interviews she did not demonstrate a minimal understanding of English and a minimal knowledge of United States history and government.

Therefore, the applicant does not satisfy either alternative of the “basic citizenship skills” requirement set forth in section 1104(c)(2)(E)(i) of the LIFE Act. Accordingly, the applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act on this basis as well.

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