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



U.S. Citizenship  
and Immigration  
Services

[Redacted]

FILE:

[Redacted]

Office: Denver

Date:

SEP 24 2004

IN RE:

Applicant:

[Redacted]

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]

PUBLIC COPY

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

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**DISCUSSION:** The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Interim District Director, Denver, Colorado, 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, counsel for the applicant submits a separate statement in which he asserts that the applicant has established by a preponderance of the evidence that she has resided continuously in the United States since January 1981. Counsel further asserts that the district director's decision fails to set forth any basis as to why the affidavits submitted in support of the applicant's claim to continuous residence were deemed to be insufficient, and asks that the decision be set aside and the application granted.

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 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 before January 1, 1982, as claimed, the applicant furnished the following evidence:

- An affidavit from [REDACTED] relative of the applicant, who attests to the applicant having lived at the affiant's place of residence from January 1981 through June 1989;
- An affidavit from [REDACTED] attesting to the applicant having worked for the affiant and his wife as a full-time babysitter since March 1983;
- An affidavit from [REDACTED] who attests to the applicant having worked for her as a full-time babysitter from January 1981 through February 1983;
- A letter from [REDACTED] Associate [REDACTED] Denver, Colorado, who asserts he has known the applicant for "many years" and that she has often attended worship services and other events at the church;
- A letter from [REDACTED] Senior Sales Director, Mary Kay Cosmetics, who asserts that she had known the applicant from January 1982 to May 1988, having visited the applicant and her family at her home; and
- A letter from [REDACTED] who asserts she had known the applicant from January 1982 to May 1988. The writer bases her knowledge on the applicant having babysat for her two children on weekends during this time;

The regulations at 8 C.F.R. § 245a.2(d) provide a list of documents that may establish continuous residence and specify that "any other relevant document" may be submitted. However, while the affidavits and third-party statements provided by the applicant could possibly be considered as evidence of continuous residence during the period under discussion, certain questions have arisen which impact on the overall credibility of her claim. It was noticed in the district director's decision that, at the applicant's adjustment interview at the Denver district office of Citizenship and Immigration Services (CIS), a transcript of which is included in the record of proceedings, she acknowledged when questioned under oath in the presence of an examining officer that she was married *in Mexico* on *January 4, 1984*. However, the applicant had previously failed to indicate this incidence of absence on her Form I-687 Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (INA), which she had signed on January 17, 1990. In fact, when queried by the examining officer at the outset of her interview, the applicant specified that she had remained in the U.S. throughout the *entire* period from her purported entry in January 1981 until January 1988. When subsequently confronted by the interviewer with information regarding her 1984 departure to Mexico, the applicant acknowledged the departure while responding that she had simply forgotten to provide this information previously.

On appeal, neither counsel nor the applicant has attempted to explain, address or resolve the issue of the applicant's omission of her 1984 departure to Mexico.

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).

Given the applicant's failure to credibly resolve the matter of her failure to reference her 1984 departure from the U.S. to Mexico, it is concluded that she has failed to establish continuous residence in the U.S. 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.