

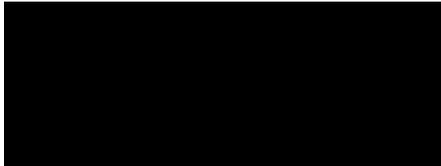
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U.S. Department of Homeland Security
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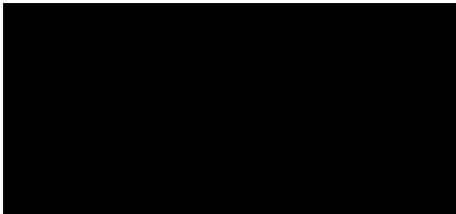
Office: Los Angeles

Date: **DEC 23 2005**

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:



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, California, and is now before the Administrative Appeals Office (AAO) 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 contends that the applicant was very nervous during her interview. Counsel asserts that this was compounded by both the applicant's limited ability to speak and understand English and her failure to utilize an interpreter during her interview. Counsel declares that these factors caused the applicant to misstate the date she first entered the United States as April 1982 rather than April 1980. Counsel submits documentation in support of the applicant's claim of residence.

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 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. 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) that is dated December 29, 1989. The record shows that the applicant failed to submit any evidence in support of her claim of continuous unlawful residence in this country since before January 1, 1982 to May 4, 1988.

The record shows that the applicant filed her Form I-485 LIFE Act application on December 10, 2001 to the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services or CIS). However, it must be noted that the applicant once again failed to submit any evidence in support of her claim of continuous unlawful residence in this country for the requisite period.

The record further shows that the applicant subsequently appeared for the requisite interview relating to her LIFE Act application on January 22, 2003. The notes of the interviewing officer reflect that during the course of this interview, the applicant testified under oath that she first entered the United States in April 1982. In addition, the record contains a sworn statement written in English by the applicant in her own hand and signed by her in which she stated in pertinent part: "I came to USA in April 82 for the first time."

The district director determined that the applicant had failed to establish continuous residence in the United States in an unlawful status since before January 1, 1982 through May 4, 1988, and, therefore denied the Form I-485 LIFE Act application on August 30, 2004.

On appeal, counsel asserts that the applicant's nervousness during her interview was compounded by her limited ability to speak and understand English and her failure to utilize an interpreter during her interview. Counsel declares that these factors caused the applicant to misstate the date she first entered the United States as April 1982 rather than April 1980. However, counsel's statements cannot be considered as persuasive as the applicant directly testified under oath that she first entered the United States in April 1982 at her interview on January 22, 2003. Further, the applicant also provided a signed sworn statement written in her own hand in English specifically acknowledging that she entered the United States for the first time in April 1982. In addition, the record shows that the applicant is sufficiently competent in the use of the English language as she passed tests establishing a minimal understanding of ordinary English during her interview.

Counsel submits documentation in support of the applicant's claim of residence on appeal. However, the reliability and credibility of the documentation included with the applicant's appeal is negated by her admission that she first entered this country in April 1982.

Counsel request that the applicant be allowed to remain in this country for the sake of her three United States citizen children has been considered. Nevertheless, there is no waiver or exception available, even for humanitarian reasons, of the requirements stated above.

Even in cases where the burden of proof is upon the government, such as in deportation proceedings, a previous sworn statement voluntarily made by an alien is admissible, and is not in violation of due process or fair hearing. *Matter of Pang*, 11 I. & N. Dec. 213 (BIA 1965).

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 own admission that she did not enter the United States until April of 1982, it is concluded that she has failed to establish continuous residence in this country 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.