

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

22

FILE:

Office: Los Angeles

Date: JAN 06 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, 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 for the applicant asserts that the applicant responded truthfully to all questions asked of her at the time of her adjustment interview. Counsel further asserts that, while noting certain alleged inconsistencies in the documentation, the district office's notice of intent to deny does not render any determination that the application is less than credible.

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

- Two separate declarations from [REDACTED] who attests to having first met the applicant in 1981 at the time she arrived in the U.S. The affiant also states that the applicant and her family lived at the affiant's place of residence in Downey, California from 1982 to 1983, at which point the applicant moved to Los Angeles, California;

- A photocopy of a letter addressed to the applicant from an acquaintance in Tijuana, Mexico. The postmark date on the envelope is not legible. The photocopy also includes what appears to be the reverse side of a manila envelope with a postmark stamp indicating the date of May 18, 1981;
- Photocopies of generic rent receipts in the applicant's name, which are dated June 15, 1983, October 1, 1984 and October 16, 1987, respectively;
- An untranslated document in Spanish from the County of Los Angeles Department of Public Social Services, which was signed by the applicant on September 2, 1987;
- Photocopies of immunization records from Metro-South Health Center, Los Angeles, California, carrying dates indicating when certain immunization procedures were administered to the applicant's children. Some of the dates included -- May 17, 1983, August 2, 1983, October 15, 1984, February 25, 1985, April 11, 1985, and June 18, 1985 -- fall within the period in question; and
- An affidavit from [REDACTED] who attests to the applicant having resided in Los Angeles, California since 1985.

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, third-party statements and photocopied rent receipts 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. In the notice of intent to deny, certain discrepancies were noted in the applicant's documentation. The aforementioned affidavit from [REDACTED] indicated that, from 1982 to 1983, the applicant resided at the affiant's place of residence at [REDACTED], California, and that in 1983, the applicant relocated to 11652 Gorman Avenue, Los Angeles, where she resided until 1989, when she and her husband moved back to the applicant's house. However, according to the applicant's Form I-687 Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (INA), she resided from November 1981 to July 1985 at [REDACTED], Los Angeles, and from July 1985 to February 1989, she lived at 11652 Gorman Avenue, Los Angeles. In addition, the district director cites the fact that dates of treatment indicated on the applicant's immunization record [1983, 1984, and 1985] occurred prior to the issuance dates of the blank forms themselves [January 1988].

In her response to the notice of intent to deny and on appeal, the applicant has attempted to address these inconsistencies. Referring to the inconsistencies in her addresses between the those set forth in the affidavit from [REDACTED] and those listed on her I-687 application, the applicant stated in response to the notice of intent that the immigration consultant assisting her in completing that application had included numerous errors on the form despite her having provided the consultant with correct information. However, the applicant has submitted no additional, independent, corroborative evidence, such as a clarification statement from the unnamed immigration consultant, to support her assertion or to indicate that the information provided on the I-687 was in any way deficient or in error. An examination of the applicant's I-687 application fails to disclose that anyone *other than* the applicant prepared the document. In addition, items 49 and 50 on the I-687, which request the name and address and signature of the person preparing the form, have been left blank.

Referring to the immunization records, the applicant asserts they were transferred by the clinic to her childrens' immunization cards. On the I-687 application, the applicant indicated that not her firstborn child, as well as her two middle children, were all born in Mexico on October 14, 1980, January 10, 1983 and December 24, 1984, respectively. As such, it is conceivable that their immunization records, along with the treatment dates, were transferred to their U.S. schools at a subsequent date. This would also serve to explain the January 1988 issuance dates of the immunization forms themselves, as noted in the notice of intent to deny. At the same time, however, this would also indicate that the records themselves were prepared and compiled *subsequent* to the 1983, 1984 and 1985 dates on which the immunization treatments were administered. As such, these would not constitute records which were contemporaneous with the actual dates of treatment.

As previously observed in this decisional notice, the I-687 indicates that the applicant's first three children were all born in Mexico on October 14, 1980, January 10, 1983 and December 24, 1984, respectively. At item 35 on the I-687 application, the applicant listed absence dates from the U.S. since her initial entry. These departures include the following periods: January 1, 1983 to January 30, 1983 and December 16, 1984 to December 31, 1984. These dates correspond with the dates the applicant's children were born in Mexico: January 10, 1983 and December 24, 1984. However, the applicant lists the purpose of the trips as "family visit." There is no indication that these departures were for the purpose of giving birth. This additional inconsistency in the applicant's documentation further diminishes the credibility of the application.

Neither counsel nor the applicant, on appeal, have attempted to explain, address or resolve these serious discrepancies in the documentation and claim.

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).

The applicant in this case has submitted a total of only *three* affidavits, two of which are from the same affiant, which attempt to account for the applicant's whereabouts during the period in question. As noted previously, the two affidavits from [REDACTED] are deficient in the details provided regarding the applicant's prior places of residence, which are at variance with information provided by the applicant herself in her previously-completed I-687 application. The photocopy of a purported letter addressed to the applicant is not dispositive as the postmark date is illegible, while the additional photocopied piece of correspondence provided by the applicant indicates only a date-stamp of May 18, 1981 on what appears to be the reverse side of a manila envelope, with no other information provided as to sender or recipient. Finally, as already discussed, the immunization records submitted by the applicant were not contemporaneous, having been compiled subsequent to the dates of previously-administered immunization treatments.

Given the applicant's failure to credibly resolve the numerous inconsistencies present in her documentation, along with her reliance on affidavits and purported contemporaneous evidence 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.