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LA

JAN 27 2005

FILE: 

Office: Los Angeles

Date:

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 declares that the applicant was confused and nervous when she appeared for her interview in September of 2002, and that this caused her to provide erroneous information regarding the date of her first entry into the United States.

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 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) on or about October 29, 1993. On the Form I-687 application, the applicant claimed that she first entered the United States in February 1981. It is noted that at part #35 of the Form I-687 application where applicants were asked to list all absences from the United States beginning from January 1, 1982, the applicant listed one absence from this country in the requisite period from January 1, 1982 to May 4, 1988, when she traveled to Mexico for thirty-two days due to an emergency from May 5, 1987 to June 5, 1987.

The record shows that the applicant appeared for an interview relating to her Form I-687 application at the Los Angeles Legalization Office on January 27, 1995. The record contains a signed sworn statement dated January 27, 1995 that the applicant wrote in her own hand in her native language of Spanish, which reads in pertinent part as follows: "[E]ntre en Octubre del 84-por primera vez a estados Unidos." The English translation of the applicant's statement is as follows: I entered in October of 84 for the first time to the United States.

The record shows that the applicant subsequently filed her Form I-485 LIFE Act application on July 27, 2001. At part #3B of the Form I-485 LIFE Act application, where applicants were asked to list immediate family members, the applicant listed a son, [REDACTED] who was born in Mexico on January 19, 1983. The fact that the applicant acknowledged that she was absent from the United States when she gave birth to her son in Mexico on January 19, 1983, directly contradicts her prior testimony on the Form I-687 application that she had only one absence from this country in the period from January 1, 1982 to May 4, 1988, when she traveled to Mexico from May 5, 1987 to June 5, 1987.

A review of the record reveals that the applicant appeared for the requisite interview relating to her LIFE Act application at the Los Angeles District Office on December 18, 2001. During the course of this interview, the applicant provided another signed sworn statement that she wrote in her own hand in her native language of Spanish, a portion of which reads as follows: "Yo me vine a U.S. por primera vez en el ano Octubre 26 del 84." The English translation of the applicant's statement is as follows: I came to the U.S. for the first time in the year October 26 of 84.

On September 5, 2002, the applicant appeared for a second interview relating to her LIFE Act application. The notes of the interviewing officer reveal that the applicant admitted that her claim to have first entered this country in February 1981 was false and reiterated that she came to the United States for the first time on October 26, 1984. When the interviewing officer asked the applicant about documents dated from 1981 to 1983 that she submitted in support of her claim of residence, she testified that she did not what they were. In addition, it must be noted that the applicant also passed tests establishing a minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States during this interview.

The district director subsequently issued a notice of intent to deny on December 18, 2003, informing the applicant that her application would be denied as a result of the testimony and sworn statements in which she admitted she did not enter the United States until October 1984. The applicant was granted thirty days to respond to the notice and overcome the stated basis for the intended denial.

In response, the applicant submitted a statement in which she declared that she first entered the United States in February 1981. The applicant claimed that she was confused and nervous when she provided erroneous information regarding the date of her first entry into this country. The applicant stated that she became pregnant with her first child while living in the United States in April of 1982, but was afraid of being alone in this country. The applicant asserted that she returned to Mexico on an unspecified date to have her child. The applicant contended that she returned to the United States alone six months after giving birth to her son who remained with her mother in Mexico. The applicant declared that she went to Mexico again in July 1984, and then returned to this country with her son on October 26, 1984. However, the applicant failed to provide any evidence to support any of the claims she advanced in her response. Moreover, the explanation put forth

by the applicant cannot be viewed as compelling enough to ignore her prior admissions that she did not enter the United States until October 1984.

Even if the applicant's response was viewed in a manner most favorable to her and her claim of continuous residence in this country since February 1981, she provided testimony in her response that tends to establish she is ineligible to adjust to permanent residence under the LIFE Act on the basis of her absences from this country in the requisite period. The applicant admitted that she had been out of this country from at least January 19, 1983, when her son was born in Mexico, until six months later when she returned to the United States in approximately June of 1983. The applicant also admitted that she went to Mexico again in July 1984, and returned to this country with her son on October 26, 1984. Based upon admissions made by the applicant in her response, she exceeded the forty-five (45) day limit for a single absence, as well as the aggregate limit of one hundred and eighty (180) days for total absences, from the United States during the period in question, as set forth in 8 C.F.R. § 245a.15(c)(1)(i). However, the basis of denial in these proceedings is not the issue of the applicant's absences from this country, but rather the credibility of her claim of continuous residence in the United States since prior to January 1, 1982, in light of the fact that she admitted she first entered this country in October of 1984. As such, the issue of the applicant's absences from the United States during the requisite period shall not be discussed further.

The district director determined that the applicant had failed to rebut the information contained in the notice and denied the application on January 23, 2004.

On appeal, counsel reiterates the applicant's claim to have continuously resided in the United States since February 1981. Counsel asserts that the applicant was confused and nervous when she appeared for her interview in September of 2002, and that this caused her to provide erroneous information regarding the date of her first entry into the United States. However, as noted previously, the applicant was sufficiently composed and focused to pass tests establishing a minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States during her interview on September 5, 2002. Furthermore, the applicant gave testimony at this interview in which she reiterated that she first came to the United States in October of 1984, the same testimony she provided in her two previous signed sworn statements dated January 27, 1995 and December 18, 2001, respectively. Neither counsel nor the applicant provides any independent evidence or an adequate reason to disregard the fact that she admitted on three separate occasions over a seven year period that she did not enter this country until October of 1984.

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 October 1984, 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.