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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY



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FILE:



Office: Los Angeles

Date:

JUL 13 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:

Self-represented

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, the applicant indicates that her inability to speak and understand English has always caused problems in her attempts to establish residence in this country for the requisite period. The applicant states that she has submitted sufficient evidence to establish that she has resided in the United States for more than ten years. The applicant asks that she be allowed to remain in this country for the sake of her three children who are United States citizens. The applicant includes copies of previously submitted documents.

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 July 6, 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 addresses up through the termination of the requisite period of residence on May 4, 1988:

- [REDACTED] from April 18, 1981 to April 1, 1984; and,
- [REDACTED] from May 5, 1984 to September 1988.

At part #36 of the Form I-687 application, where applicants were asked to list all employment in the United States since the date of their first entry, the applicant indicated that she had been employed as a baby sitter by [REDACTED] from 1981 to 1984 and then subsequently as a housekeeper by [REDACTED] from 1985 to 1988.

The record also contains another separate Form I-687 application that is signed by the applicant and dated February 16, 1995. At part #33 of this Form I-687 application, the applicant listed the following addresses as her residences during the requisite period:

- [REDACTED] from 1981 to 1985; and,
- [REDACTED] from 1986 to 1993.

At part #36 of this particular Form I-687 application, the applicant indicated that she had been employed as a baby sitter by [REDACTED] from 1981 to 1983 and then subsequently as a baby sitter by [REDACTED] from 1984 to 1987.

The applicant failed to offer any explanation for the discrepancy in the listing of her places and dates of residence, as well her employers and periods of employment on the two separate Form I-687 applications. It must be noted that both of the Form I-687 applications contain no indication that the documents had been prepared and executed by any individual other than the applicant.

In an attempt to establish continuous unlawful residence since before January 1, 1982 to May 4, 1988, the applicant furnished two employment letters, a video store membership card, an affidavit attesting to a trip she made in 1987, and three affidavits of residence. While all three affiants attest that the applicant resided at the same addresses listed on the Form I-687 application dated July 6, 1991 in their respective affidavits of residence, these three individuals testified that her residence at such addresses began on April 18, 1988, rather than April 18, 1981 as listed in the Form I-687 application. The applicant failed to provide any explanation for the discrepancy in the listing of her dates of residence in these three affidavits.

The two employment letters provided by the applicant were signed by [REDACTED] and [REDACTED] respectively, and were both dated September 18, 1990. In her letter [REDACTED] testified that she employed the applicant as a baby sitter from 1981 to 1984. Ms. [REDACTED] stated that she employed the applicant as a housekeeper and baby sitter from 1985 to 1987 in her letter. While the dates of employment listed [REDACTED] and [REDACTED] tend to correspond to the dates of employment listed by the applicant on the Form I-687 application dated July 6, 1991, these dates of employment directly contradict the employment dates listed on the separate Form I-687 application dated February 16, 1995.

The record shows that the applicant filed her Form I-485 LIFE Act application on February 20, 2002 to the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services or CIS). The applicant provided copies of previously submitted supporting documents, as well as the following new evidence:

- An employment affidavit signed by [REDACTED] who testified that he employed the applicant as a baby sitter in 1983; and,

- An employment letter dated August 12, 2003 that is signed by [REDACTED] who stated that she employed the applicant as a baby sitter from 1984 to 1987.

As discussed above, the applicant had previously submitted an employment letter dated September 18, 1990 that is signed by [REDACTED] in which she stated that she employed the applicant as a baby sitter from 1981 to 1984. This prior testimony directly contradicts [REDACTED]'s most current statement in her letter dated August 12, 2003, that the applicant worked for her as a baby sitter from 1984 to 1987. Neither the applicant nor Ms. Perez put forth any explanation for this direct contradiction.

In addition, it must be noted that the applicant failed to list [REDACTED] as an employer at part #36 of either of the two separate Form I-687 applications contained in the record. The applicant failed to provide any explanation as to why [REDACTED] had been omitted as an employer on both of the Form I-687 applications.

The record further shows that the applicant subsequently appeared for the requisite interview relating to her LIFE Act application on April 19, 2004. The notes of the interviewing officer reflect that during the course of this interview, the applicant testified that she first entered the United States in May 1982 and that she was a student in Mexico before coming to this country in 1982. In addition, the record contains a sworn statement that was signed by the applicant at her interview in which she admitted that she first entered the United States in May 1982, and that she had been a student in Mexico before she came this country in 1982.

In the notice of intent to deny issued on May 18, 2004, the district director questioned the veracity of the applicant's claimed residence in the United States during the requisite period based upon her admission that she had not entered the United States until May 1982, as well as other conflicts and discrepancies in testimony relating to her claim of residence. The applicant was granted thirty days to respond to the notice.

In response the applicant submitted a statement in which she claimed that the CIS officer who conducted her interview on April 19, 2004, told her she would be scheduled for an interview appointment at a later date because she needed to bring an individual who could interpret English and Spanish. The applicant indicated that it was her desire that the interview be conducted that day and she asked the interviewing officer if someone in the waiting room could act as an interpreter. The applicant asserted that the individual who acted on her behalf as interpreter did not have sufficient knowledge of English and made mistakes relating to the dates that she claimed to reside in the United States. The applicant acknowledged that her knowledge of English was limited but she was still able to discern that the interpreter made mistakes during the interview. The applicant declared that she was afraid to ask for another interview because she did not want to upset the interviewing officer. The applicant contended that she first entered and began residing in the United States in May 1981. The applicant stated that any discrepancies in the listing of her addresses of residence in this country during the requisite period on the Form I-687 applications was the result of mistakes made by the preparer.

The applicant's claims regarding the circumstances that occurred during the course of her interview can neither be confirmed nor denied from the record. The record does contain a consent form that was signed by the applicant at the time of her interview on April 19, 2004, in which the applicant authorized, [REDACTED] to act as interpreter in English and Spanish and relieving CIS of any responsibility associated with this action. The consent form is also signed by [REDACTED] who attested to his fluency in both Spanish and English and affirmed that he would truthfully, literally, and fully interpret all questions and answers during the interview. If the applicant knew that the interpreter was making mistakes relating to her dates of residence in this country it was incumbent of her

to bring such mistakes to the attention of the interpreter and interviewing officer. The notes of the interviewing officer demonstrate that the applicant testified that she first entered the United States in May 1982 and that she was a student in Mexico before coming to this country in 1982. Moreover, the record contains a signed sworn statement in which the applicant admitted that she first entered the United States in May of 1982, and that she had been a student in Mexico before she came this country in 1982.

The applicant claimed that an unnamed preparer made errors in listing her addresses of residence in this country during the requisite period on the Form I-687 applications. However, as has been previously noted, neither of the two Form I-687 applications submitted by the applicant contains any indication that the documents had been prepared and executed by any individual other than her.

The applicant also provided a new listing of all her addresses of residence in the United States. However, the applicant failed to specify the dates she resided at each of the addresses on her list. While the new listing contained a majority of the addresses that the applicant listed on both of the Form I-687 applications contained in the record, this new listing omits two addresses of residence contained in Form I-687 application dated February 16, 1995, and also includes an address that the applicant had not previously as a residence.

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 May 21, 2004.

On appeal, the applicant indicates that her inability to speak and understand English has always caused problems in her attempts to establish residence in this country for the requisite period. The applicant states that she has submitted sufficient evidence to establish that she has resided in the United States for more than ten years. While the applicant claims that her lack of competence in English has always hindered her ability to establish her continuous residence in the requisite period, such explanation cannot be viewed as compelling enough to ignore her prior admission that she was a student in Mexico until 1982, and first entered the United States in May 1982.

The applicant's request that she 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 May of 1982, as well as the numerous discrepancies and contradictions discussed above relating to the applicant's claim of residence in

the United States for the requisite period, 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.