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U.S. Citizenship
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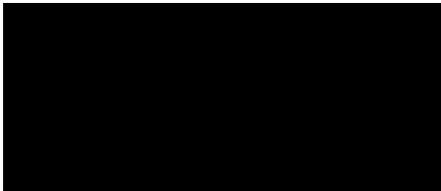
Office: Denver

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 Interim District Director, Denver, Colorado, 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 asserts that the district office's decision denying the application for failure to establish continuous residence under the LIFE Act was in error.

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 prior to January 1, 1982, the applicant submits the following:

- Three separate affidavits from [REDACTED] all of which attest to having known the applicant since 1982;
- An affidavit from [REDACTED] who attests to the applicant having resided in Los Angeles since March 1981;

- Photocopies of photographs purportedly taken at Disneyland, with no dates or descriptive information included;
- A receipt from Rockview Farms Home Delivery Service dated February 7, 1985. The receipt is not made out to the applicant but to [REDACTED] and [REDACTED];
- A photocopied invoice from [REDACTED] dated June 22, 1987, which is made out to the applicant;

As stated above, the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. In this case, the applicant has submitted three third-party affidavits attesting to her residence since 1982, all of which are from the same affiant [REDACTED]

The only evidence provided by the applicant in support of her claim to U.S. residence prior to 1982 is the aforementioned affidavit from [REDACTED] Ms. [REDACTED] who identifies herself as the applicant's cousin, attests to the applicant having resided at the affiant's place of residence from March 1981 to December 1981. Affidavits from those identifying themselves as relatives or close family members of the applicant must be closely scrutinized as such individuals clearly have an obvious interest in the outcome of the proceedings and, as such, cannot be deemed objective or disinterested parties.

The only contemporaneous documentation provided by the applicant consists of one photocopied invoice dated June 22, 1987, which is made out to the applicant. In light of the fact that the applicant claims to have continuously resided in the U.S. since March 1981, the minimal amount of contemporaneous documentation she has submitted in support of her claim to continuous residence raises questions regarding the credibility of the claim.

The application was also denied due to the district director's determination that the applicant had exceeded the forty-five (45) day limit for single absences from the United States during the period from prior to January 1, 1982 to May 4, 1988. This determination was based on the applicant having admitted at her adjustment interview at the Denver District Office of Citizenship and Immigration Services (CIS) that she departed the U.S. for Mexico in April 1986 and was absent for a period of six months until her return to the U.S. in September 1986.

On appeal, counsel acknowledges that the applicant's 6-month absence from the U.S. in 1986 exceeded the forty-five day limit for single absences, but argues that the regulatory definition at 8 C.F.R. § 245a.15(c)(1) of what constitutes a break in an alien's continuous unlawful residence amounts to a denial of the applicant's constitutional rights to equal protection. However, counsel does not endeavor to elaborate as to exactly *how* defining or quantifying the concept of "continuous unlawful residence" in this context amounts to a denial of an applicant's constitutional rights.

While concluding, in this case, that the applicant's 6-month absence exceeded the forty-five day limit for single absences, there must also be a further determination as to whether the applicant's prolonged absence from the U.S. was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988) holds that *emergent* means "coming unexpectedly into being." In response to the notice of intent to deny, the applicant submitted a personal statement in which she indicated that, at the time she left the U.S. for Mexico in April 1986, she "did not know how long [she] was going to stay" and that her intention at the time was "to go back to live in Mexico." Clearly, there is no indication that

an emergent reason "which came suddenly into being" delayed or prevented the applicant's return to the United States beyond the designated 45-day limit on such absences.

Given the applicant's having far exceeded the 45-day limit for single absences from the U.S. during the period in question, along with the minimal evidence submitted in support of her claim to continuous residence, it is concluded that she has failed to establish continuous residence in the U.S. in an unlawful status from prior to January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.