

identifying data deleted to
prevent clarity or warranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L2



FILE:



Office: Houston

Date: NOV 25 2005

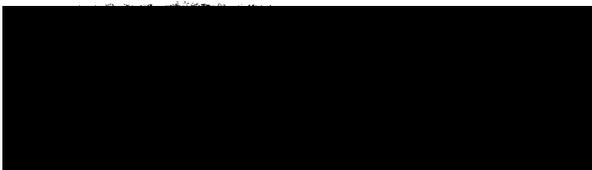
IN RE:

Applicant:



APPLICATION: 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, Houston, Texas, 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. This decision was based on the district director's conclusion that the applicant admitted that she had been absent from this country for four to five months beginning in December 1987, and, therefore, exceeded the forty-five (45) day limit for a single absence from the United States during this period, as set forth in 8 C.F.R. § 245a.15(c)(1)(i). The district director further concluded that the applicant was not continuously physically present in the United States as required by 8 C.F.R. § 245a.16(b) because of her admitted absence from this country for four to five months beginning in December 1987.

On appeal, counsel argues that the applicant misstated that she had been absent from the United States for four months in 1987, rather than four weeks at her interview on January 14, 2004. Counsel contends that the applicant's misstatement resulted from her limited knowledge of English and nervousness. Counsel provides copies of previously submitted documentation in support of the appeal.

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. See § 1104(c)(2)(B) of the LIFE Act and 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 must establish continuous physical presence in the United States in the period beginning on November 6, 1986 and ending on May 4, 1988. See 8 C.F.R. § 245a.11(c).

The regulation at 8 C.F.R. § 245a.16(b) reads as follows:

For purposes of this section, an alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences from the United States. Also, brief, casual, and innocent absences from the United States are not limited to absences with advance parole. Brief, casual, and innocent absence(s) as used in this paragraph means temporary, occasional trips abroad as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.

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 July 25, 1991. At part #35 of the Form I-687 legalization 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 when she traveled to Mexico to visit her family in December 1987.

The record shows that the applicant subsequently submitted a Form I-485, Application to Register Permanent Resident or Adjust Status under the LIFE Act, on June 29, 2001. The record further shows that the applicant subsequently appeared for the requisite interview relating to her LIFE Act application at the Houston, Texas District Office on January 14, 2004. During the course of this interview, the interviewing officer's notes reflect that the applicant testified under oath that she had exited the United States and traveled to Mexico in 1987 but that she had in fact been absent for four to five months. The applicant testified that she remained in Mexico that long to spend more time with her family. The applicant stated that the Form I-687 legalization application was incorrect in listing her absence as one month in December 1987 because the length of her absence was actually some four months. The record further shows that the applicant reaffirmed her sworn testimony regarding the actual length of her absence from the United States as four to five months by signing the interviewing officer's notes.

On March 9, 2004, the district director issued a notice of intent to deny informing the applicant that her application would be denied as a result of the testimony she provided at the interview regarding her absence from the United States in the requisite period. 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 claimed that she had misstated the length of her absence as four months rather than four weeks at the time of her interview. The applicant asserted that she made this mistake because she was nervous. The applicant provided an account of the circumstances surrounding the dates she purportedly departed and returned to the United States in December 1987. In support of her claim, the applicant submitted two affidavits signed by her mother [REDACTED] and father, [REDACTED] respectively.

Based upon the applicant's admission that she had been absent from the United States for four to five months beginning in December 1987, the district director determined that the applicant was ineligible for permanent residence under the provisions of LIFE Act and denied the application.

On appeal, counsel contends that the applicant's misstatements regarding the length of her absence from the United States beginning in December 1987 resulted from her limited knowledge of English and nervousness. In addition, counsel asserts that the applicant previously provided her own statement, as well as affidavits from her mother and father, to resolve any confusion regarding her misstatements at her interview and demonstrate that her absence was four weeks rather than some four months in response to the notice of intent to deny. However, counsel's statements cannot be considered as persuasive as the applicant directly testified that she had been absent for four to five months beginning in December 1987 and that she remained in Mexico that long to spend more time with her family at her interview on January 14, 2004. Further, the applicant specifically acknowledged that the Form I-687 legalization application was incorrect in listing her absence as one month in December 1987 because the length of her absence was actually some four months. 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 and a knowledge and understanding of the history and government of the United States during her interview. The probative value of the testimony contained in the affidavits provided by the applicant's mother and father must be considered to be limited as such testimony has been provided by immediate family members who have an interest in the outcome of proceedings, rather than independent and disinterested third parties. Although counsel indicates that unsuccessful attempts were made to contact the applicant's former employer for additional evidence, he fails to provide any explanation as to why no attempt was made to obtain additional affidavits containing specific and detailed information pertaining to her absence from the United States beginning in December 1987 from individuals with little or no interest in these proceedings such as neighbors, friends, and acquaintances.

Even if the applicant's absence of four to five months from this country beginning in December 1987 was determined to be brief, casual, and innocent for the purpose of establishing continuous physical presence in this country, such determination would have no impact on the finding she did not continuously reside in the United States in the period from prior to January 1, 1982 to May 4, 1988 as her absence exceeds the forty-five day limit for a single absence. Therefore, the issue of the applicant's continuous physical presence in the United States in the period beginning on November 6, 1986 and ending on May 4, 1988 need not be discussed further.

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 has specifically admitted that she exceeded the forty-five day limit for a single absence from this country when departed to Mexico in December 1987 and remained there for four to five months to spend more time with her family at her interview on January 14, 2004. The applicant has failed to establish having resided in continuous unlawful status in the United States from prior to January 1, 1982 through May 4, 1988, as

required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act.

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