

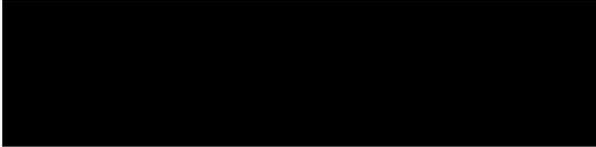
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U.S. Department of Homeland Security
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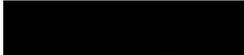
U.S. Citizenship
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Office: Los Angeles

Date: OCT 24 2005

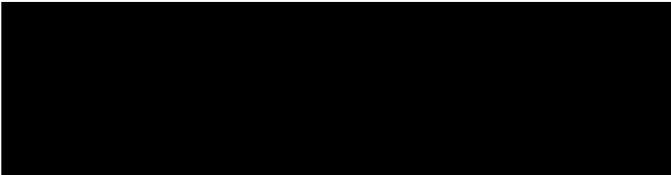
IN RE:

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, Los Angeles, California, and is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant had not established that she resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel asserts that the applicant's Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (INA), was prepared by an unlicensed notary public who entered erroneous information relating to her absences from this country. Counsel contends that the applicant subsequently compounded this error by stating that she had been deported from the United States in July 1987 and did not return to this country until November 1987 at her interview on February 28, 2003. Counsel declares that the applicant was nervous and confused at her interview and that this was the reason why she misstated the dates of her absences from 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. 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 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 on November 30, 1988. The applicant listed her mother's name as [REDACTED] At part #2 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 indicated that she had been absent from this country for two hundred twenty-nine days from October 28, 1987 to June 13, 1988 when she traveled to Guatemala as a result of her mother's illness. With her Form I-687 application, the applicant provided a “Form for Determination of Class Member in *CSS v. Meese*,” dated November 9, 1988. At question #9 of the

determination form where applicants were asked to provide details regarding each absence from this country during the requisite period, the applicant declared that she departed the United States and traveled by airplane to Guatemala on October 28, 1987 to visit her ailing mother, assist in caring for her during recuperation, and collect amnesty documents. The applicant stated that she returned to the United States by entering without inspection when she walked across the border on June 13, 1988 in order to resume her continuous residence in this country.

The applicant also included a letter written in Spanish and signed by [REDACTED] which is accompanied by a certified English translation. The translated letter stated in pertinent part:

The undersigned medical doctor and surgeon collegiate number [REDACTED] at the Faculty and Medical Sciences of the San Carlos University of Guatemala certifies that [REDACTED] was under medical treatment during the months of October 1987 to June 1988 for cardiac arrest that brought her close to death. And for the legal uses pertaining to her daughter [REDACTED] we send this certification of [her] illness in Bananera Morales Izabal, on the fourth day of October nineteen hundred eighty eight.

In addition, the applicant provided an airline ticket and excess baggage ticket that reflect that she purchased a ticket from a travel agency on October 17, 1987 for a flight departing from Los Angeles, California to Guatemala City, Guatemala on Taca International Airlines on October 27, 1987.

Based upon the evidence in the record and the applicant's own testimony as contained in both the Form I-687 application and her determination form, it must be concluded that her admitted absence from the United States in the period from October 28, 1987 to June 13, 1988 constituted two hundred twenty-nine days, 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). Consequently, the applicant cannot be considered to have continuously resided in the United States for the requisite period pursuant to 8 C.F.R. § 245a.11(b).

The record shows that the applicant subsequently filed her Form I-485 LIFE Act application on November 27, 2001. The record further shows that the applicant appeared for an interview relating to her LIFE Act application at the Los Angeles, California District Office on February 28, 2003. During this interview, the applicant provided a signed sworn statement executed in her own hand in her native language of Spanish that reads as follows, "Yo Fidencia fui deportada en Julio 1987 a Guatemala y regres[e] Nobienbre [Noviembre] 1987." The English translation of the applicant's signed sworn statement is "I, Fidencia was deported in July 1987 to Guatemala and returned in November 1987." Although the record contains a Federal Bureau of Investigation printout indicating that the applicant was arrested by the United States Border Patrol for an unspecified immigration violation and placed into deportation proceedings on May 3, 1988, neither the administrative nor electronic record reflect that she was deported as a result of her arrest on this date. Nevertheless it must be noted that applicant has admitted that she had been absent from the United States for approximately four to five months from July 1987 to November 1987 and, therefore, she had exceeded the forty-five limit for a single absence as provided in 8 C.F.R. § 245a.15(c)(1).

On January 26, 2004, the district director issued a notice of intent to deny to the applicant informing her of CIS' intent to deny her LIFE Act application. Specifically, the district director noted that the applicant's admitted absences from the United States in the requisite period from July 1987 to November 1987 and from

October 28, 1987 to June 13, 1988 both exceeded the forty-five 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).

In response to the notice of intent to deny and on appeal, counsel asserts that the applicant's Form I-687 application was prepared by an unlicensed notary public who entered erroneous information relating to her absence from this country. Counsel contends that the applicant subsequently compounded this error by stating that she had been deported from the United States in July 1987 and did not return to this country until November 1987 at her interview on February 28, 2003. Counsel declares that the applicant was nervous and confused at her interview and that this was the reason why she misstated the dates of her absences from the United States. Counsel states that the applicant left the United States for the first time on October 28, 1987 as indicated on the Form I-687 application, but that she returned to this country in November 1987 as she had written in her sworn statement on the date of her interview on February 28, 2003. Counsel asserts that the applicant was subsequently detained by Service at San Ysidro, California in April 1988, sent to Guatemala in early June 1988, and returned to the United States on June 13, 1988.

However, contrary to counsel's assertion a review of the Form I-687 application reflects that this document was prepared on the applicant's behalf and signed by attorney, [REDACTED] rather than an unlicensed notary public. The record contains a Form G-28, Notice of Entry of Appearance as Attorney or Representative, dated October 28, 1988, that is signed by both the applicant and [REDACTED] and specifically authorized this individual to represent the applicant before the Service in his capacity as attorney. As noted above, the applicant indicated that she had been absent from this country for two hundred twenty-nine days from October 28, 1987 to June 13, 1988 when she traveled to Guatemala as a result of her mother's illness at part #35 of the Form I-687 application. At part #46 of the Form I-687 application, the applicant signed the document and certified that all information contained in the Form I-687 application was true and correct. Further, the applicant provided a separate detailed account of her absence in the determination form in which she declared that she departed the United States and traveled by airplane to Guatemala on October 28, 1987 to visit her ailing mother, assist in caring for her during recuperation, and collect amnesty documents and that she returned to the United States by entering without inspection when she walked across the border on June 13, 1988 in order to resume her continuous residence in this country. The applicant provided additional evidence, specifically the letter signed by [REDACTED] which only serves to reinforce the conclusion that the applicant was absent from this country while she cared for her ill mother in Guatemala from October 28, 1987 to June 13, 1988.

While counsel may be correct in declaring that the applicant was nervous and confused at her interview and that this was the reason she misstated the dates of her absences from the United States, it is considered significant that she once again admitted that she had been absent from this country for more than forty-five days in the period from January 1, 1982 to May 4, 1988, even if she misstated the specific dates of her absence. In addition, it must be noted that the applicant provided specific nearly contemporaneous testimony in which she acknowledged that she had been from the United States from October 28, 1987 to June 13, 1988 within one year of this event in both the Form I-687 application and the determination form that were submitted on November 30, 1988. Such testimony is considered more accurate and reliable as it relates to the specific dates of the applicant's absence when compared to testimony she provided relating to this absence over twelve years later at her interview on February 28, 2003. Moreover, neither counsel nor the applicant has provided any direct and independent evidence to corroborate the claim that she was absent from this country on two separate occasions for less than forty-five days during the requisite period. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these

proceedings. *Matter of Soffici*, 22 I. & N. Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I. & N. Dec. 190 (Reg. Comm. 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I. & N. Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I. & N. Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I. & N. Dec. 503, 506 (BIA 1980).

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the 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 she traveled to Guatemala on October 27, 1987, and did not return to the United States until June 13, 1988. The applicant has failed to establish that an emergent reason within the meaning of *Matter of C-*, 19 I. & N. Dec. 808 (Comm. 1988), delayed her return to the United States. 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.