



U.S. Citizenship
and Immigration
Services

L2

[Redacted]

FILE:

[Redacted]

Office: Los Angeles

Date: JAN 17 2006

IN RE:

Applicant:

[Redacted]

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:

[Redacted]

identifying data deleted to
prevent clearly unwarranted
disclosure of personal privacy

PHOTIC COPY

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

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 from before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel contends that the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services, or CIS) has failed to recognize the difficulty in attempting to obtain evidence relating to events that occurred more than twenty years ago while the applicant was an undocumented illegal alien. Counsel submits a new affidavit in support of the applicant's claim of residence for the requisite period.

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. See 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 May 18, 1990. The applicant subsequently submitted her Form I-485 LIFE Act application on May 10, 2002. In support of her claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted five affidavits, two photocopied residential leases, two original receipts, five photocopied timecards, an employment letter, photocopies of three paychecks, and a photocopied paycheck stub.

On April 22, 2004, the district director issued a notice of intent to deny to the applicant informing her of CIS' intent to deny her application because she failed to submit sufficient evidence of continuous unlawful residence in the United States from January 1, 1982 through May 4, 1988. The applicant was granted thirty days to respond to the notice and provide additional evidence in support of her claim of residence in the requisite period.

In response, counsel submitted a brief in which he declared that the applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel contended that CIS has failed to recognize the difficulty in attempting to obtain evidence relating to events that occurred more than twenty years ago while the applicant was an undocumented illegal alien.

However, a review of the record reveals the following testimony and evidence that tends to undermine the credibility of the applicant's claim of residence. At parts #16, #17, and #18 of the Form I-687 application where applicants were asked to list the date, manner, and place of last entry into the United States, the applicant indicated that she last entered this country on July 24, 1987 without a visa at Buffalo, New York. 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 only one absence from this country of twenty-nine days when she traveled to India to visit family from June 25, 1987 to July 24, 1987. With the Form I-687 application, the applicant included a "Form for Determination of Class Membership in CSS v. Meese," in which she reiterated that she had been absent from the United States from June 25, 1987 when she traveled to India to visit family and that she reentered this country without inspection on July 24, 1987. However, the record contains a printout from the Service's Nonimmigrant Information System dated March 4, 1991, which reflects that the applicant obtained a B-2 visitor's from the United States Consulate in Bombay, India on July 9, 1987. This printout further reflects that the applicant utilized the B-2 visa to enter the country at John F. Kennedy International Airport in Queens, New York on September 8, 1987. This information directly contradicts the applicant's claim that she reentered the United States on July 24, 1987 without a visa at Buffalo, New York. In addition, the printout contradicts the applicant's claim that she had been absent from the United States for only twenty-nine days from June 25, 1987 to July 24, 1987, instead tending to establish that she had been absent from this country for a minimum of sixty-one days from July 9, 1987 to September 8, 1987 to a maximum of seventy-five days from June 25, 1987 to September 8, 1987.

Further, the applicant specified that her son, Salim, had been born in India on April 16, 1982 at part #32 of the Form I-687 application where applicants were asked to provide information regarding their immediate family. With the Form I-687 application, the applicant included a photocopy of an application for a duplicate of her Indian passport that had been submitted to Consulate General of India in San Francisco, California, in which she again listed her son Salim's date of birth as April 16, 1982. The applicant failed to provide any explanation as to how her only claimed absence from the United States occurred in 1987, when she had given birth to her son in India on April 16, 1982, or in the alternate how she could claim residence in this country prior to January 1, 1982 if she had given birth to her son on such date. The applicant subsequently provided a photocopy of a foreign language document that is purportedly the birth certificate of her son [REDACTED]. While the applicant provided an English translation of the document in which her son's date of birth is listed as July 16, 1981, the translation is not certified as required by regulation. Any document containing foreign language submitted to the CIS shall be accompanied by a full English language translation which the translator has certified

as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. *See* 8 C.F.R. 103.2(b)(3). Without a certified translation, it is impossible to determine a correct and accurate date of birth for the applicant's son Salim. Further, the applicant has failed to provide any explanation as how she made the same mistake in two separate and distinct documents executed on different dates when she listed her son's date of birth as April 16, 1982 on both the Form I-687 application and the application for a replacement of her Indian passport if in fact he had been born on July 16, 1981.

The district director determined that the applicant had failed to establish his claim of residence for the requisite period and denied the application on April 22, 2004.

The statements of counsel on appeal regarding the amount and sufficiency of the applicant's evidence of residence as well as her inability to obtain further documentation in light of her status as an illegal alien and the significant passage of time have been considered. Nevertheless, the record contains direct evidence as well as the applicant's own testimony that seriously impairs the credibility of her claim of continuous residence in this country for the requisite period.

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 herself has provided conflicting testimony relating to the date of birth of her son Salim that brings into question the credibility of her claim of continuous residence in the United States since prior to January 1, 1982. Further, the record contains a computer printout from the Nonimmigrant Information System that reflects the applicant was absent from this country for a minimum of sixty-one days from July 9, 1987 to September 8, 1987 to a maximum of seventy-five days from June 25, 1987 to September 8, 1987, thereby exceeding the forty-five day limit for a single absence set forth in 8 C.F.R. § 245a.15(c)(1). Consequently, it must be concluded that the applicant 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.