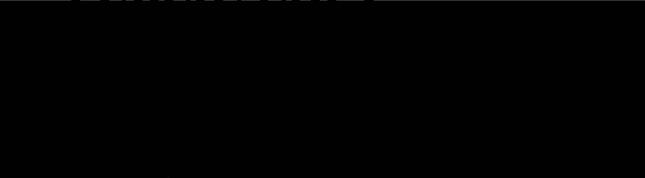




U.S. Citizenship
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FILE:



Office: LOS ANGELES

Date: JUN 06 2006

MSC 02 221 61941

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:

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, Chief
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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because she determined that 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, the applicant provides the following additional evidence to establish continuous, unlawful residence in the United States during the statutory period: five affidavits; a computer printout which records certain sales commissions that the applicant received in 1987; a copy of her sales log from November 1987 through March 1988; four sales receipts from sales that she made while working for Lexicon School of Languages during 1987 and 1988; and nine sales receipts from sales that the applicant conducted while working for [REDACTED] during 1982-1986. Finally, the applicant furnishes other evidence that documents her presence in the United States outside the statutory period. These documents are not relevant to her claim.

An applicant for permanent resident status under section 1104 of the LIFE Act 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 through May 4, 1988. See § 1104(c)(2)(B) of the LIFE Act and 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).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also states that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. See *U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence, or if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

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).

Here, the submitted evidence is not relative, probative and credible.

On October 19, 1989, the applicant applied for class membership in a legalization class-action lawsuit and submitted Form I-687, Application for Status as a Temporary Resident. On May 9, 2002, the applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status.

The applicant filed the following documents in support of her claim that she resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988:

1. An affidavit signed by [REDACTED] that is not notarized. The affidavit indicates that the applicant resided in Los Angeles, California from May 1981 until the date that the affidavit was signed. The affidavit is not dated. It was apparently submitted to the Service during October 1989.
2. An affidavit signed by [REDACTED] that is not notarized. The affidavit indicates that the applicant resided in San Diego, California from January 1983 until the date that the affidavit was signed. The affidavit is not dated. It was apparently submitted to the Service during October 1989.
3. An employment letter dated October 5, 1989 that is not on letterhead stationary and is not notarized. The letter indicates that the applicant worked for [REDACTED] in San Diego, California from May 1981 through January 1983.
4. An employment letter dated October 6, 1989 that is not on letterhead stationary and is not notarized. The letter indicates that the applicant worked for [REDACTED] in San Diego, California from February 1983 through April 1987.
5. A letter dated October 11, 1989 signed by [REDACTED], the same individual who signed the document listed at #3 above, which indicates that the applicant resided continuously in the United States during the statutory period. The letter is not notarized.
6. An affidavit signed by [REDACTED] that is neither dated nor notarized which indicates that the applicant resided in Bell, California from 1987 through 1989.
7. A letter signed by [REDACTED] dated October 11, 1989 which indicates that the applicant resided in Santa Maria, California for approximately seven months during 1987. The letter is not notarized.
8. The applicant's sales commission check from her employer in California dated November 20, 1987.
9. A Form I-705, Affidavit Confirming Seasonal Agricultural Employment of an Applicant for Temporary Residence Status Under Section 210 of the Immigration and Nationality Act, which indicates that the applicant did agricultural work in California from April 1987 through November 1987.
10. A copy of the applicant's immunization record which indicates that the applicant received medical care in California, such as a TB skin test, during 1987.

11. A notarized affidavit signed by [REDACTED] dated April 1990 which indicates that the applicant resided: in San Diego, California from 1981-1987; in Santa Maria, California for part of 1987; in Bell, California from 1987-1989; and in San Diego, California from 1989-present.

The applicant also filed documentation of having resided in the United States outside the statutory period. These documents are not relevant to her claim.

The applicant claimed on her Form I-687 and she testified during her LIFE interview that she was continuously present in the United States during the statutory period, except for the following two absences: a twenty-day absence in November/December 1982 and a fifteen day absence in December 1987. However, at the LIFE interview, she presented copies of certain pages from her expired Mexican passport, and these photocopied pages contain information, explained below, which indicates that the applicant was absent from the United States on several other occasions during the statutory period:

- The identity page indicates that Mexican officials issued this passport to the applicant in Mexico during August 1982.
- The passport contains two Border Crossing Card (BCC) stamps which a U.S. Consular Officer in Tijuana, Mexico issued to the applicant during October 1982 and June 1985, respectively.
- The passport contains four U.S. immigration entry stamps. The stamps indicate that the applicant entered the United States at San Ysidro, California: on November 6, 1982; on June 19, 1985; and on July 8, 1987. The fourth stamp indicates that she entered at Otay Mesa, California on August 2 of 1983 or 1984. That is, the last two digits of the date stamp for this August entry are not legible. However, the placement of the entry stamp in the passport makes clear that this entry was authorized by the BCC that the U.S. Consulate issued in October 1982 and which expired in April 1985. Thus, this August entry must have been in 1983 or 1984.

On May 20, 2004, the district director issued a Notice of Intent to Deny (NOID). She concluded that the applicant had failed to submit adequate, credible evidence of continuous, unlawful residence in the United States from prior to January 1, 1982 through May 4, 1988. Specifically, the director found deficiencies and inconsistencies in the record. The director pointed out that the applicant failed to list any residence in the United States prior to 1987 at part #33 of the Form I-687. Also, affiant [REDACTED] indicated that he had knowledge of the applicant residing in Los Angeles from 1981 until the "present". Yet, affiant [REDACTED] indicated that he had knowledge of the applicant residing in San Diego from 1983 until the "present". Although neither of these affidavits is dated, the applicant apparently submitted both to the Service in October 1989. Accordingly, the affiants appear to have provided conflicting information regarding the alien's place of residence.

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).

In response to the NOID, the applicant submitted:

1. A copy of the [REDACTED] affidavit with an addendum in which the affiant indicates that the applicant resided in San Diego, California, not Los Angeles, California, from May 1981 until the present. This new submission is neither dated nor notarized. There are no initials or signature next to the addendum. There is no original signature anywhere on the affidavit.
2. An affidavit signed by [REDACTED] Cardenas which indicates that the applicant resided at her home in the city of San Diego, California from May 1981 through January 1983. The affidavit is neither dated nor notarized.
3. An affidavit signed by [REDACTED] in which the affiant states that he has personal knowledge that the applicant resided in San Diego from May 1981 until January 1983. Yet, in this same affidavit, the affiant indicates that he first met the applicant in January 1983. The affiant also indicates that the applicant resided in San Diego, California from February 1983 through March 1987. The affidavit is neither dated nor notarized.
4. A letter written by the applicant in which she explains that the person who prepared her Form I-687 erred in that this preparer forgot to list the addresses at which the applicant resided during 1981-1987. She indicated that the affidavits listed above at #2 and #3 would make clear that she had resided in San Diego, California during this period. She also indicated that the statement on the [REDACTED] affidavit - that she lived in Los Angeles during the statutory period - was a mistake. She indicated that the same person who prepared the Form I-687 prepared this affidavit and was responsible for this mistake as well. She suggested that [REDACTED] amended affidavit listed at #1 above would resolve this **apparent inconsistency in her documentation.**
5. A copy of the [REDACTED] affidavit which was already part of the record.

On June 23, 2004, the director denied the application based on the reasons set out in the NOID.

On appeal, the applicant submits the following documents as evidence that she maintained continuous, unlawful residence in the United States during the statutory period:

- Five affidavits that attest to her continuous residence in the United States during the statutory period. The affiants specify that the applicant lived in National City, California [not the city of San Diego, California] during 1981-1983.
- A computer printout which records certain sales commissions that the applicant received during 1987.
- A copy of the applicant's detailed sales log for individual sales that she conducted from November 1987 through March 1988.
- Four receipts for sales that the applicant conducted while employed by Lexicon School of Languages during 1987 and 1988. Each is signed by the applicant and the individual buyer.

- Nine receipts for sales that the applicant conducted while employed by [REDACTED] during 1982-1986. None of these documents are signed or dated by the buyer, even though the receipts include a signature/date line for the buyer. These receipts are not date-stamped or otherwise endorsed by the company. The dates on each receipt and all other information added to these preprinted receipt forms, appear to have been handwritten by the applicant.

The applicant also furnishes other evidence that documents her presence in the United States outside the statutory period. These documents are not relevant to her claim.

When responding to the NOID, the applicant had an opportunity to provide competent, objective evidence to resolve the apparent inconsistency between the statement of affiant [REDACTED] that the applicant resided in Los Angeles, California during the statutory period and the statement of affiant [REDACTED] that the applicant resided in San Diego, California during the statutory period. Yet, instead, the applicant submitted an amended affidavit for [REDACTED] which had no original signature, no date, nor was it not notarized. She also submitted an affidavit in which [REDACTED] made contradictory assertions: a) that he had personal knowledge that the applicant resided in San Diego, California during 1981-1983; and b) that he did not meet the applicant until 1983. The applicant provided the affidavit of [REDACTED] which specifies that the applicant resided at the home of this affiant at [REDACTED] San Diego, California 92102 from 1981-1983. Yet, on appeal, the applicant submitted five affidavits which specify that the applicant lived in National City, California, not San Diego, California, during this same time period.¹ An amended affidavit that was never duly executed, an affidavit that is internally inconsistent and an affidavit that is contradicted by subsequent submissions are not competent, objective forms of evidence. It is noted also that the affidavit of [REDACTED] and the amended affidavit of [REDACTED] both suggest that the applicant resided in San Diego, California during the entire statutory period. Yet, this is contradicted by the Form I-687, the affidavit of [REDACTED] dated April 23, 1990, the five affidavits submitted on appeal and other submitted evidence which indicate that the applicant resided in Northern California (Santa Maria) during seven months of 1987, and subsequent to that in Orange County, California (Bell) from 1987 until the end of the statutory period.

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. at 582.

In addition to having statements that are inconsistent with each other, many of the applicant's affidavits are neither notarized nor dated. The applicant's two Electrolux employment letters - that attest to her employment in California from 1981-1987 - are not on letterhead stationary, nor are they notarized. The probative value of such documentation is minimal.

¹ National City, California is a separate city with the zip code: 91950. That is, National City, California is not a neighborhood *within* the city of San Diego, California. See e.g. www.city-data.com/city/National-City-California.html (which indicates that National City is several miles from San Diego) and www.city-data.com/zips/92102.html.

Further, the information contained in the applicant's passport - which indicates that the applicant was absent from the United States during the statutory period on, at least, five occasions beyond the two absences which she lists on her Form I-687 and to which she testified at her LIFE interview – further undercuts the overall credibility of her evidence and her claim.

Finally, the only documents that might be seen as contemporaneous evidence of the applicant's residence in the United States during the years 1981-1986 are nine sales receipts dated: June '82, October '82, January '83, August '83, August '84, December '84, May '85, March '86 and August '86. These receipt forms are not signed by the individual buyers or by anyone other than the applicant. The forms contain only dates and other information which the applicant had written by hand. When viewed within the context of the totality of the evidence, such documentation is not sufficient to support a finding that it is more likely than not that the applicant *resided continuously* in the United States during the years 1981-1986, nor does such documentation place the applicant in the United States prior to January 1, 1982.

In sum, the applicant did not provide “competent, objective evidence” sufficient to resolve: the inconsistency between the statements of her affiants and regarding where she lived during the statutory period; and the inconsistency between her own assertion that she resided in the United States prior to 1987 and her failure to list any residence in the United States prior to 1987 on her Form I-687. She did not otherwise establish that she resided continuously in the United States during the statutory period.

Thus, it is found that the applicant has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988. Accordingly, the applicant is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

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

6/01/06