

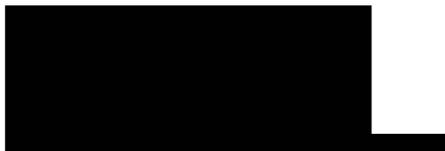
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U.S. Department of Homeland Security
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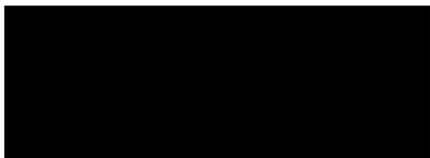
Office: NEWARK Date:

JUN 21 2006

IN RE: Applicant: [Redacted]

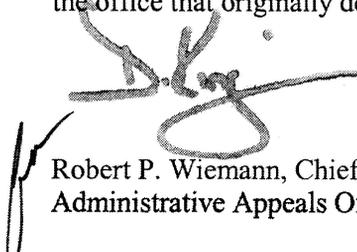
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



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. Any further inquiry must be made to that office.


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, Newark, New Jersey, 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 entered the United States before January 1, 1982 and had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, the applicant asserts she had previously provided affidavits from five affiants who attested to her presence in the United States. The applicant claims that it is difficult to obtain documentation from 23 years ago.

It is noted that the applicant had previously filed a LIFE application August 3, 2001, which was denied due to abandonment on September 19, 2002. A denial due to abandonment may not be appealed, but an applicant may file a motion to reopen. 8 C.F.R. §103.2(b)(15). On October 28, 2002, the applicant filed a motion to reopen which was denied on November 19, 2002.

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).

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 stated 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 applicant 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 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.

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 relevant, probative, and credible. In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence:

- An affidavit notarized June 19, 2003 from [REDACTED] of Passaic, New Jersey, who attested to have employed the applicant as a housekeeper from November 1985 to April 1987.
- An affidavit notarized June 19, 2003 from [REDACTED] of Piscataway, New Jersey, who claimed to have known the applicant since 1985 and attested to have employed the applicant as a babysitter from June 1987 to December 1989.
- A letter dated June 25, 2003 from [REDACTED] executive director of Mount Eden Retreat in Washington, New Jersey, who indicated that the applicant first attended the retreat in 1988.
- A letter notarized June 24, 2003 from [REDACTED], chief executive officer of Community Action for Social Affairs Inc. (CASA) in Paterson, New Jersey, who indicated that the applicant has been a CASA volunteer since April 1986.

On June 27, 2003, the director issued a Request for Additional Evidence, requesting that the applicant provide documentation of her physical presence in the United States from 1982 to 1988. The applicant, in response, submitted a letter dated September 23, 2003 from [REDACTED] human resource manager of Power Battery Company, Inc., in Paterson, New Jersey, who indicated that she has been acquainted with the applicant since 1981. Ms. Stanton asserted that the applicant had applied for a position in the maintenance department, but at the time there was no position available. Ms. Stanton asserted that she has kept in contact on and off throughout the years with the applicant since that time.

In a Notice of Intent to Deny dated February 9, 2004, the director advised the applicant that [REDACTED] letter alone was insufficient to establish her residence in the United States prior to January 1, 1982. The applicant, in response, provided copies of documentation previously provided along with a letter from Lourdes Lopez of Passaic, New Jersey, who indicated that the applicant was in her employ from 1981 to 1988. Ms. Lopez asserted that the applicant was employed as a housekeeper and babysitter on an as needed basis.

The applicant's statement on appeal has been considered; however, the AAO does not view the affidavits from the affiants as substantive enough to support a finding that the applicant entered and began residing in the United States before January 1, 1982 through May 4, 1988. [REDACTED] and [REDACTED] claimed to have employed the applicant, but provide no address for the applicant as required by 8 C.F.R. § 245a.2(d)(3)(i). Likewise, the remaining affiants attested to the applicant's presence in the United States during the requisite period, but provided no address for the applicant.

The applicant asserts that she has continuously resided in the United States since January 1, 1982. Throughout the application process, however, the applicant has failed to provide an *actual address* of where she resided during the requisite period. No lease agreement, rent receipts, or utility bills have been submitted in an effort to corroborate her residence during the requisite period. The applicant's and the affiants' failure to provide her address during the requisite period along with the inability to produce contemporaneous documentation of residence raises questions regarding the credibility of the claim.

The applicant also asserts, "I have no absence from the United States, I never left or traveled." The applicant, however, indicated on her LIFE application that her last arrival into the United States was in November 1985.

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).

Given the credibility issues arising from the documentation provided by the applicant, it is determined that the applicant has not met her burden of proof. The applicant has not established, by a preponderance of the evidence, that she entered the United States before January 1, 1982 and resided in this country in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the District Office does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

An applicant for permanent resident status under section 1104 of the LIFE Act must establish that before October 1, 2000, he or she filed a written claim with the Attorney General for class membership in one of the following legalization class-action lawsuits: *Catholic Social Services, Inc. v. Meese*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) ("CSS"), *League of United Latin American Citizens v. INS*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) ("LULAC"), or *Zambrano v. INS*, vacated sub nom. *Immigration and Naturalization Service v. Zambrano*, 509 U.S. 918 (1993) ("Zambrano"). *See* section 1104(b) of the LIFE Act and 8 C.F.R. § 245a.10. In the alternative, an applicant may demonstrate that his or her spouse or parent filed a written claim for class membership in a legalization class-action lawsuit before October 1, 2000. *See* 8 C.F.R. § 245a.10. However, the applicant must establish that the family relationship existed at the time the spouse or parent initially attempted to apply for temporary residence (legalization) in the period of May 5, 1987 to May 4, 1988. 8 C.F.R. § 245a.10.

The applicant provided a copy of her marriage certificate that indicates her marriage occurred on February 7, 1990. Because the requisite relationship to her spouse did not exist when the spouse may have attempted to apply for legalization during the May 5, 1987 through May 4, 1988 period, the applicant cannot derive status from her spouse under section 1104 of the LIFE Act.

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