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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

L2

[redacted]

FILE: [redacted] Office: DENVER Date: NOV 03 2006
MSC 03 245 61770

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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. 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, Baltimore, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had admitted under oath that she had not entered the United States until January, 1986, and was unable to meet the physical presence requirement of the LIFE Act. The director also denied the application because the applicant did not demonstrate basic citizenship skills at her interview on June 22, 2004.

On appeal, the applicant asserts that she is attending English classes. In support of the appeal the applicant submitted three copies of three birth certificates and a document from Community College of Aurora (Colorado) stating she has completed an English as a Second Language (ESL) course in the fall of 2004.

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).

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 Citizenship and Immigration Services (CIS) 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).

Under section 1104(c)(2)(E)(i) of the LIFE Act, regarding basic citizenship skills, an applicant for permanent resident status must demonstrate that he or she:

(I) meets the requirements of section 312(a) of the Immigration and Nationality Act (8 U.S.C. 1423(a))(relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States); or

(II) is satisfactorily pursuing a course of study (recognized by the Attorney General) to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

An applicant may establish that he or she has met the requirements of section 312(a) of the Act by providing evidence that he or she has attended or is attending a state recognized, accredited learning institution in the United States, following a course of study which spans one academic year and that includes 40 hours of instruction in English and United States history and government. The applicant may provide documentation of such on the letterhead stationary of said institution prior to or during the LIFE interview. *See* 8 C.F.R. § 245a.17(a)(3).

On June 2, 2003, the applicant submitted this I-485 to adjust status under LIFE Act legalization.

At the applicant's interview on June 22, 2004, the applicant admitted under oath that she did not come to the United States until January 1986.

On August 12, 2004, the director issued a Notice of Intent to Deny (NOID) explaining that she could not meet the physical presence requirements for LIFE Act adjustment of status.

In response to the NOID the applicant submitted a birth certificate from Mexico revealing that her son was born in Mexico in 1985.

In this case the applicant admitted she did not come to the United States until January, 1986. All of the documentation submitted by the applicant is dated after October 4, 1986. Both of the documents submitted on appeal are dated after January of 1986, when the applicant had admitted she came to the United States.

The applicant has admitted that she did not come to the United States until 1986 and cannot meet the physical presence requirements of LIFE Act adjustment of status.

The director also denied the petition because the applicant did not demonstrate basic citizenship skills at her June 22, 2004 interview.

The applicant who fails to pass the English literacy and/or the United States history and government tests at the time of the initial LIFE interview shall be afforded a second opportunity after 6 months: to pass the tests; to submit evidence of a high school diploma or GED from a school in the United States; or to submit evidence that he or she has attended or is attending a state-recognized, accredited learning institution in the United States, following a course of study which spans an academic year and that includes 40 hours of instruction in English and United States history and government. *See* 8 C.F.R. § 245a.17(b).

The applicant submitted a copy of a copy of a document which states she has completed a level 3 ESL class. However, the document submitted does not establish that the institution which issued the document is a state recognized, accredited learning institution. The document also does not explain or establish that the program which the applicant participated is following a course of study which spans one academic year and that includes 40 hours of instruction in English and United States history and government. Thus, the evidence submitted by the applicant is not sufficient to establish that she has satisfied the basic citizenship skills requirement.

At an interview on June 22, 2004, the applicant failed the English literacy and United States history and government test. The record does not indicate that the applicant was afforded a second opportunity to pass the tests. Thus, the director's decision with regard to demonstrating basic citizenship skills was premature and will be withdrawn with regard to demonstrating basic citizenship skills.

It is concluded that the applicant has failed to establish continuous residence in the U.S. for the required period.

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