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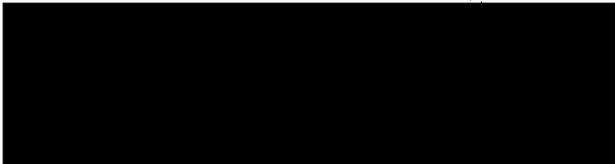
Office: Sacramento

Date: APR 26 2007

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. The file has 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, San Francisco, California, and is now 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 had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. In addition, the district director determined that the applicant had not established her continuous physical presence in the United States from November 6, 1986 to May 4, 1988. Finally, the district director determined that the applicant had failed to submit sufficient documentation to establish that she satisfied the "basic citizenship skills" required under section 1104(c)(2)(E) of the LIFE Act. Therefore, the director concluded that the applicant was ineligible to adjust to permanent residence under the provisions of the LIFE Act and denied the application.

On appeal, counsel asserts that the applicant has submitted sufficient evidence in support of her claim of residence in the United States since prior to January 1, 1982 as well as her claim of continuous physical presence in this country from November 4, 1986 to May 4, 1988. Counsel declares that applicant has attended and is currently attending a course in the study of English as a second language. Counsel submits documentation in support of the applicant's appeal.

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).

An applicant for permanent resident status must establish continuous physical presence in the United States in the period beginning on November 6, 1986 and ending on May 4, 1988. See 8 C.F.R. § 245a.11(c).

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 under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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. See 8 C.F.R. § 245a.12(e).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982 to May 4, 1988, the submission of any other relevant document including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

8 C.F.R. § 245a.2(d)(3)(v) states that attestations by churches, unions, or other organizations to the applicant's residence by letter must: identify applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of

the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

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 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.

The first issue to be determined in this proceeding is whether the applicant has submitted sufficient credible evidence to 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. Here, the submitted evidence is not relevant, probative, and credible.

The applicant made a claim to class membership 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 Act to the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) on December 28, 1989. At part #32 of the Form I-687 application where applicants were asked to provide information relating to their immediate family, the applicant listed two sons, [REDACTED] and [REDACTED], as her only children. At part #33 of the Form I-687 application where applicants were asked to list all residences in the United States since the date of their first entry, the applicant failed to list any addresses of residence in this country prior to July 1987 and listed [REDACTED] in Sacramento, California from July 1987 to December 28, 1989, the date the Form I-687 application was submitted to the Service. The fact that the applicant failed to list any address(es) of residence in the United States prior to July 1987 seriously impairs the credibility of her claim of continuous residence in this country since prior to January 1, 1982.

In support of her claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted photocopies of the birth certificates of her two sons, [REDACTED]. These two State of California birth certificates reflect that the applicant's son [REDACTED] was born in Los Angeles, California on May 19, 1981, while her son [REDACTED] was subsequently born in Los Angeles, California on November 8, 1982.

The applicant included a photocopy of her California Identification Card that was issued on March 3, 1983 and listed her address as [REDACTED] in Van Nuys, California. However, the applicant failed to provide any explanation as to why she did not list this address as an address of residence at part #33 of the Form I-687 application if in fact she had resided at such address during the period in question.

The applicant provided photocopies of two separate and distinct immunization records relating to each of her two sons [REDACTED]. The immunization records relating to the applicant's son [REDACTED] can be differentiated because one set of records lists his date of birth while the other does not. The immunization records relating to the applicant's son [REDACTED] that list his date of birth reflect that he received polio vaccinations in October 1981, June 1982, September 1982, and September 1987 in Mexico, DTP (diphtheria, tetanus, pertussis) vaccinations in October 1981, November 1981, June 1982, December 1982, and September 1987 in Mexico, and an MMR (measles, mumps, and rubella) vaccination in February 1982 in Mexico. While the immunization records that do not provide a date of birth for the applicant's son Gustavo indicate that he received an MMR vaccine on May 20, 1983 in Canoga Park, California, this document does not reflect the date or place any other vaccinations were given to her son [REDACTED]. The immunization records relating to the applicant's son [REDACTED] can be differentiated because one set of records erroneously lists his date of birth as August 11, 1982, while the other correctly lists his date of birth as November 8, 1982. The immunization records relating to the applicant's son Jorge that list his correct date of birth reflect that he received polio vaccinations in May 1983, June 1983, October 1984, and September 1987 in Mexico, DTP vaccinations in May 1983, June 1983, October 1984, October 1985, and September 1987 in Mexico, and a MMR vaccination in September 1983 in Mexico. However, immunization records relating to the applicant's son [REDACTED] that list an erroneous date of birth reflect that he received a polio vaccination on May 20, 1983 in Canoga Park, California and another polio vaccination from a Dr. [REDACTED] on April 30, 1984 in an unspecified location, a DTP vaccination on May 20, 1983 in Canoga Park, California and another DTP vaccination from a Dr. [REDACTED] on April 30, 1984 in an unspecified location, and a MMR vaccination from a Dr. [REDACTED] on March 19, 1984 in an unspecified location. Although the two sets of immunization records for the applicant's two sons are of limited probative value because of the conflicting nature of the information contained therein, it must be noted that the more complete and extensive records tend to establish that the applicant's two young sons were in Mexico for the majority of the requisite period rather than the United States.

The applicant provided a letter dated December 25, 1989 that contained the letterhead of St. John's Lutheran Church in Sacramento, California and is signed by [REDACTED], Jr., who listed his position as "Hispanic Ministry." In his letter, Mr. [REDACTED] stated that the applicant and her two sons, [REDACTED] had been known to the parish staff of this religious institution since August of 1987. Mr. [REDACTED] declared that the applicant and her family were regular attendees and participants in the church's Hispanic Ministry Program since such date. However, Mr. [REDACTED] failed to provide the applicant's address of residence during that period that the applicant was affiliated with St. John's Lutheran Church as required under 8 C.F.R. § 245a.2(d)(3)(v).

While the applicant submitted contemporaneous documentation that tends to establish that she was more likely than not residing in the United States in that period from May 19, 1981, when her son was born in Los Angeles, California, to March 3, 1983, the date she was issued her California

Identification Card, she failed to submit any verifiable and credible evidence of her residence in this country from March 4, 1983 to May 4, 1988.

Subsequently, on January 3, 2002, the applicant filed her Form I-485 LIFE Act application. At part #3B of the Form I-485 LIFE Act application, where applicants were asked to list immediate family members, the applicant listed her two sons, [REDACTED] but now listed an additional son [REDACTED] with a date of birth of July 31, 1987. Although the applicant provided a State of California Delayed Registration of Birth for [REDACTED] that listed her as the mother of this child, she failed to offer any explanation as to why [REDACTED] was not listed as her child at part #32 of the Form I-687 application where applicants were asked to provide information relating to their immediate family. Additionally, in his letter dated December 25, 1989, [REDACTED], failed to mention that the applicant had a third son, [REDACTED], and only referenced her two sons, [REDACTED] and [REDACTED] in attesting to the applicant's regular attendance and participation in the Hispanic Ministry of St. John's Lutheran Church since August of 1987. Further, the Delayed Registration of Birth for [REDACTED] reflected that this child's birth was not registered until August 31, 1992, over five years after his date of birth. These omissions and discrepancies bring into question the circumstances surrounding the birth of this child including the issue of the child's maternity as well as the credibility of the applicant and her claim of residence in this country for the requisite period.

In the notice of intent to deny issued on June 25, 2004, the district director questioned the veracity of the applicant's claimed residence in the United States by indicating that she had failed to submit sufficient evidence in support of her claim. The applicant was granted thirty days to respond to the notice and submit additional evidence in support of her claim of residence in this country since prior to January 1, 1982.

In response, the applicant submitted three pages of records reflecting her participation in an English literacy class at the Grant Adult Education.

The district director determined that the applicant failed to submit sufficient credible evidence demonstrating her residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988, and, therefore, denied the Form I-485 LIFE Act application on February 2, 2005.

On appeal, counsel asserts that the applicant has submitted sufficient evidence in support of her claim of residence in the United States since prior to January 1, 1982. Counsel submits a statement signed by [REDACTED] who states that the applicant resided at [REDACTED], California from 1980 to 1983. While this address matches the address attributed to the applicant on her California Identification Card issued on March 3, 1983, [REDACTED] failed to testify to the applicant's residence in the United States after 1983 through to May 4, 1988. As has been acknowledged, the evidence in the record tends to establish that the applicant was at least present if not residing in the United States for that period from May 19, 1981, when her son was born in Los Angeles, California, to March 3, 1983, the date she was issued her California Identification Card.

Counsel submits photocopies of previously submitted documentation including copies of the birth certificates and corresponding immunization records for her sons [REDACTED]. However, it must be noted that the counsel only provided the copies of the incomplete immunizations records

that were discussed above without providing the more complete and extensive records that tend to establish that the applicant's two young sons were in Mexico for the majority of the requisite period rather than the United States.

Counsel also provides the immunization records of [REDACTED], the individual that applicant listed as her son on the Form I-485 LIFE Act application. However, counsel fails to offer any explanation as to why the applicant failed to list [REDACTED] as her son on the Form I-687 application that she filed on December 28, 1989. As has been discussed, the fact that the applicant failed to list [REDACTED] as her son on the Form I-687 application in addition to the five-year delay in registering his birth brings into question the circumstances surrounding the birth of this child including the issue of this child's maternity.

As has been acknowledged, the evidence in the record tends to establish that the applicant was more likely than not residing in the United States for that period from May 19, 1981, when her son was born in Los Angeles, California, to March 3, 1983, the date she was issued her California Identification Card. The absence of any independent verifiable supporting documentation seriously undermines the credibility of the applicant's claim of residence in this country for that period after March 3, 1983 through to May 4, 1988. The applicant has diminished her own credibility as well as the credibility of her claim of continuous residence in this country for such period by providing conflicting testimony and evidence relating to the number of biological children to whom she gave birth. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet her burden of proof in establishing that she has resided in the United States since prior to January 1, 1982 to May 4, 1988 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.12(e) and *Matter of E--M--*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's failure to provide any credible evidence to corroborate her claim of residence and her own conflicting testimony relating to significant events that occurred during the period in question, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States for the entire period from prior to January 1, 1982 to 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 on this basis.

The next issue to be determined in this proceeding is whether the applicant established continuous physical presence in this country from November 6, 1986 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

An applicant for permanent resident status must establish continuous physical presence in the United States in the period beginning on November 6, 1986 and ending on May 4, 1988. See 8 C.F.R. § 245a.11(c).

As has been discussed previously, the applicant failed to list any address(es) of residence in the United States prior to July 1987 at part #33 of the Form I-687 application where applicants were asked to list all residences in the United States since the date of their first entry. The record contains

no direct evidence reflecting the applicant's continuous physical presence in the United States for the period beginning on November 6, 1986 through to July 30, 1987.

The applicant provided a State of California Delayed Registration of Birth for [REDACTED] that listed his date of birth as July 31, 1987 and the applicant as his mother. However, the applicant has failed to offer any explanation as to why [REDACTED] was not listed as her child at part #32 of the Form I-687 application where applicants were asked to provide information relating to their immediate family.

As has been noted, the applicant submitted a letter dated December 25, 1989 in which [REDACTED], testified that the applicant and her two sons, [REDACTED], had been known to the parish staff of St. John's Lutheran Church since August 1987 as a result their regular attendance and participation in the church's Hispanic Ministry Program. However, the probative value of Mr. [REDACTED] testimony is severely limited because he failed to attest to the applicant's address of residence during that period that she was a member of this religious institution as required by 8 C.F.R. § 245a.2(d)(3)(v). In addition, the fact that Mr. [REDACTED] did not mention a third son, [REDACTED], only serves to raise further questions relating to the circumstances surrounding the birth of this child including the issue of this child's maternity.

The applicant failed to provide any evidence to demonstrate her continuous physical presence in the United States for the period beginning November 6, 1986 through to July 30, 1987. The evidence submitted by the applicant relating to her continuous physical presence in this country from July 31, 1987 to May 4, 1988 is lacking required information in the case of the letter from [REDACTED]. Furthermore, evidence in the record relating to the child [REDACTED] only serves to undermine the applicant's claim of continuous physical presence in the United States for the period in question. Thus, the applicant failed to establish that she was continuously physical present in the United States in the period beginning on November 6, 1986 and ending on May 4, 1988 as required by 8 C.F.R. § 245a.11(c), and, therefore, is ineligible to adjust permanent resident status under the provisions of the LIFE Act on this basis as well.

The next issue to be examined in this proceeding is whether the applicant has established that she satisfied the "basic citizenship skills" required under section 1104(c)(2)(E) of the LIFE Act.

Under section 1104(c)(2)(E)(i) of the LIFE Act ("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.

Under section 1104(c)(2)(E)(ii) of the LIFE Act, the Attorney General may waive all or part of the above requirements for aliens who are at least 65 years of age or developmentally disabled.

The applicant, who is neither 65 years old nor developmentally disabled, does not qualify for either of the exceptions in section 1104(c)(2)(E)(ii) of the LIFE Act. Nor does she satisfy the "basic citizenship skills" requirement of section 1104(c)(2)(E)(i)(I) of the LIFE Act because she does not meet the requirements of section 312(a) of the Immigration and Nationality Act (Act). An applicant can demonstrate that he or she meets the requirements of section 312(a) of the Act by "[s]peaking and understanding English during the course of the interview for permanent resident status" and answering questions based on the subject matter of approved citizenship training materials, or "[b]y passing a standardized section 312 test . . . by the Legalization Assistance Board with the Educational Testing Service (ETS) or the California State Department of Education with the Comprehensive Adult Student Assessment System (CASAS)." 8 C.F.R. §§ 245a.3(b)(4)(iii)(A)(1) and (2).

In the alternative, an applicant can satisfy the basic citizenship skills requirement by demonstrating compliance with section 1104(c)(2)(E)(i)(II) of the LIFE Act. The "citizenship skills" requirement of section 1104(c)(2)(E)(i)(II) is defined by regulation in 8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3). As specified therein, an applicant for LIFE Legalization must establish that:

He or she has a high school diploma or general education development diploma (GED) from a school in the United States. . . . 8 C.F.R. § 245a.17(a)(2), or

He or she has attended, or is attending, a state recognized, accredited learning institution in the United States, and that institution certifies such attendance. The course of study at such learning institution must be for a period of one academic year (or the equivalent thereof according to the standards of the learning institution) and the curriculum must include at least 40 hours of instruction in English and United States history and government. . . . 8 C.F.R. § 245a.17(a)(3).

Both 8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3) specify that applicants must submit evidence to show compliance with the basic citizenship skills requirement "...either at the time of filing Form I-485, subsequent to filing the application but prior to the interview, or at the time of the interview...."

8 C.F.R. § 245a.17(b) states that:

An applicant who fails to pass the English literacy and/or the United States history and government tests at the time of the interview, shall be afforded a second opportunity after 6 months (or earlier at the request of the applicant) to pass the tests or submit evidence as described in paragraphs (a)(2) and (a)(3) of this section [8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3)]. The second interview shall be conducted prior to the denial of the application for permanent residence and may be based solely on the failure to pass the basic citizenship skills requirements.

Pursuant to 8 C.F.R. § 245a.17(b), the applicant was interviewed twice in connection with her LIFE Act application, on February 18, 2003 and again on August 28, 2003. On both occasions, the applicant was unable to speak English and demonstrate a minimal knowledge of the English language. Furthermore, the applicant did not provide evidence of having passed a standardized citizenship test, as permitted by 8 C.F.R. § 312.3(a)(1). The applicant in this case does not have a high school diploma or a GED from a United States school, and therefore does not satisfy the regulatory requirement of 8 C.F.R. § 245a.17(a)(2). Nor did the applicant provide evidence to demonstrate that she attended a state recognized, accredited learning institution in the United States that provides a course of study for a period of one academic year (or the equivalent thereof according to the standards of the learning institution) with curriculum including at least 40 hours of instruction in English and United States history and government as allowed under 8 C.F.R. § 245a.17(a)(3).

Both in response to the notice of intent to deny and on appeal, the applicant submitted documentation demonstrating her participation in an English as second language (ESL) class from September 4, 2003 to February 9, 2006 at the Adult Education component of the Grant Joint Union High School District in Sacramento, California. However, the pertinent regulations at 8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3) specify that an applicant must submit evidence demonstrating compliance with the basic citizenship skills requirement in that period from the date the Form I-485 LIFE Act application is filed to the date the second interview is conducted. Further, the documentation submitted by the applicant does not reflect that such course included any instruction relating to the history and government of the United States as required by both section 1104(c)(2)(E)(i)(II) and 8 C.F.R. § 245a.17(a)(3). The applicant in this particular case failed to submit evidence to establish compliance with the basic citizenship skills requirement in that period from the date she submitted her Form I-485 Life Act application on January 3, 2002 to the date of her second interview on August 28, 2003.

Therefore, the applicant does not satisfy either alternative of the "basic citizenship skills" requirement set forth in section 1104(c)(2)(E)(i) of the LIFE Act. Accordingly, the applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act on this basis as well.

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