

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

L2

PUBLIC COPY



FILE: [REDACTED]
MSC 02 217 60334

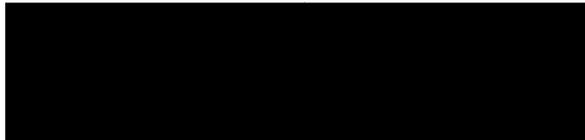
Office: HOUSTON

Date: APR 27 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. 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, Houston, Texas, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the director erred in denying the application and did not consider the evidence submitted in response to the Notice of Intent to Deny. Counsel submits a brief in support of the 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. Section 1104(c)(2)(B) of the LIFE Act; 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 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 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).

In a declaration to determine class membership, which she signed under penalty of perjury on September 2, 1991, the applicant stated that she first entered the United States in December 1981. On a Form I-687, Application for Status as a Temporary Resident, which she also signed under penalty of perjury on September 2, 1991, the applicant admitted to only one absence from the United States during the qualifying period, from December 20, 1987 to January 22, 1988, when she returned to Mexico to visit her family. The applicant stated that she lived at the following addresses in Houston, Texas during the

requisite period: at 9 [REDACTED] from December 1981 to February 1987; and at [REDACTED] from February 1987 to November 1990. The applicant also claimed the following employment as a housekeeper in Houston during the requisite period:

December 1981 to January 1983
March 1983 to November 1984
December 1984 to December 1986
From January 1987.



The record contains a modified copy of the applicant's Form I-687, although the record does not reflect the date of those modifications. On the modified Form I-687 application, the applicant identified three children born in Mexico in September 1982, October 1983 and March 1987, which she had not originally included on her Form I-687 application. The applicant also now stated that she had been absent from the United States in each of the aforementioned years for a period of one month for the purpose of giving birth to these children.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant submitted the following evidence:

1. An April 20, 1992 affidavit from the applicant's brother-in-law, [REDACTED], in which he stated that the applicant lived with him from December 1981 to January 1987 at [REDACTED] and that the lease and all utilities were in his name. The applicant submitted no documentary evidence to verify that Mr. [REDACTED] lived at the stated address during the stated time frame.
2. An April 21, 1992 affidavit from [REDACTED], in which she states that she had known the applicant since December 1981. The affiant did not state how or where she became acquainted with the applicant, or that the applicant had continuously resided in the United States during the requisite period.
3. An April 21, 1992 affidavit from [REDACTED] in which she stated that he had known the applicant since December 1981. As with Ms. [REDACTED], the affiant did not state the circumstances of his acquaintance with the applicant or that she had resided continuously in the United States during the required period.
4. An April 21, 1992 affidavit from [REDACTED] in which she stated that she had known the applicant since December 1981. As with the previous affiants, Ms. [REDACTED] did not state the circumstances of her relationship with the applicant or that she resided in the United States during the requisite period.
5. An April 15, 1992 affidavit from [REDACTED], in which she stated that the applicant worked for her as a housekeeper from December 1981 to January 1983.
6. An April 19, 1992 affidavit from [REDACTED], in which she stated that the applicant worked for her as a housekeeper from March 1983 to November 1984.
7. An April 21, 1992 affidavit from [REDACTED] in which she stated that the applicant worked as her housekeeper from December 1984 to December 1986.

8. An April 12, 1992 affidavit from the applicant's sister-in-law, [REDACTED], in which she stated that the applicant lived with her at [REDACTED] from February 1987 to November 1990.
9. A July 4, 1996 affidavit from [REDACTED] in which she stated that the applicant left the United States for Mexico in December 1987 and returned in January 1988. The affiant stated that she was aware of this because the applicant was her neighbor at that time.

During an April 27, 1992 interview, the applicant stated that she entered the United States in June or July 1982 with her husband and son, and that her only absence from the United States during the qualifying period was in December 1987. In a July 18, 1996, the applicant stated that she first entered the United States in December 1981, and that she left in 1982, 1983 and 1987 to give birth to her children. She further stated that these children were brought to the United States in 1990 by her brother-in-law. As discussed above, the applicant did not initially state on her 1991 application that she had children born in Mexico in 1982, 1983 and 1987, or claim that she had left the United States during those periods to give birth to those children. The applicant submitted no independent, objective or corroborative evidence of these entrances and exits from the United States. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant did not address this issue in response to the director's Notice of Intent to Deny issued on October 22, 2004 or on appeal. The applicant has submitted no contemporaneous or independent objective evidence to resolve this inconsistency. Although she submitted affidavits attesting to her residency and employment during the qualifying period, the applicant submitted no corroborative evidence of her employment or any documentary evidence to establish that the affiants were present in the United States during the qualifying period.

Given the absence of any contemporaneous documentation and the unresolved inconsistencies in the record, 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.