

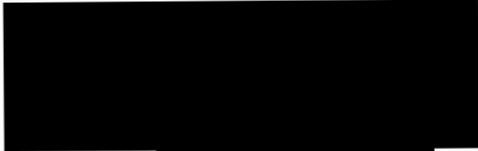


U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

L2



FILE:

MSC 01 278 60107

Office: LOS ANGELES

Date:

FEB 05 2007

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. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, California, 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, the applicant states that she has provided evidence that establishes by a preponderance of the evidence that she was present in the United States during the required period. The applicant submits no further documentation 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 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 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).

The applicant stated on a form to determine class membership, which she signed under penalty of perjury on April 10, 1990, that she entered the United States without inspection in October 1981. The applicant stated on her Form I-687, Application for Status as a Temporary Resident, which she also signed under penalty of perjury on April 10, 1990, that her only absences during the qualifying period were September 20 to November 11, 1984, when she traveled home to give birth; from November 3 to November 30,

1986, when she went home to visit her parents; and from December 15, 1987 to January 10, 1988, when she went home again to visit her parents.

According to the applicant on her Form I-687 application, she worked as a domestic for several individuals from November 1981 to August 1986. The applicant stated that she was an unemployed housewife from November 1986 until the date of her Form I-687 application on April 10, 1990.

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 4, 1990 affidavit from [REDACTED] in which she stated that the applicant and her husband lived with the affiant from October 1981 until February 1987. We note that the affiant shares the same last name as the applicant and her husband but there is no indication as to whether the affiant is related to the applicant. The affiant provided no additional information regarding her knowledge of the applicant.
2. A March 16, 1990 letter from [REDACTED] in which she stated that the applicant worked for her as a housekeeper and babysitter two days a week from November 1981 through July 1986. As with the other employment verification letters submitted by the applicant, which are discussed below, the letter from Ms [REDACTED] provides no further details regarding the applicant's work, such as pay, the address at which she lived during her employment or provide the basis by which the writer determined the dates of the applicant's employment.
3. A March 27, 1990 letter from [REDACTED] in which she certified that the applicant worked for her once a week as a domestic from December 1981 through December 1984.
4. A March 26, 1990 letter from [REDACTED] in which she stated that the applicant cleaned her house twice a week from March 1982 through December 1985.
5. An April 3, 1990 letter from [REDACTED] in which she stated that the applicant worked for her as a housekeeper one day a week from February 1983 through March 1986.
6. A March 2, 1990 letter from [REDACTED] in which she stated that the applicant worked for her twice a week as a domestic from October 1984 through February 1986.
7. A March 29, 1990 letter from [REDACTED] in which she stated that the applicant worked for her as a cleaning person from November 1984 through August 1986.
8. A February 26, 1987 State of California identification card issued to the applicant.
9. A copy of the California birth certificate and medical card of the applicant's son born on May 4, 1987, and copies of the applicant's medical records apparently associated with the pregnancy. The applicant also submitted a copy of her son's immunization record issued by the Temple Health Center in Los Angeles.
10. Copies of envelopes addressed to the applicant at [REDACTED]. Several of the envelopes contain canceled postmarks that are illegible; however, those that can be read reflect that they were canceled in 1987.

11. A partial copy of a year 1988 Form 1040, U.S. Individual Income Tax Return, indicating a joint return by the applicant and her husband. The form does not contain a signature page and there is no indication that it was ever filed with the Internal Revenue Service.
12. A copy of a year 1988 Form 540A, California Short Tax Form, reflecting that it is a joint returned by the applicant and her husband. However, the form is not signed or dated by either of them, and there is no indication that it was filed with the State of California.

As noted above, the employment verification letters do not comply with the provisions of 8 C.F.R. § 245a.2(d)(3)(i), in that they do not indicate the applicant's address at the time of her employment or state the basis used in determining the beginning and ending dates of the applicant's employment. The applicant also submitted a copy of an immunization record from the County of Los Angeles Department of Health Services for her child born on October 16, 1984 in Guatemala. The document has entries dating to 1985; however in her LIFE Act adjustment interview, the applicant stated that she left the child with her mother after his birth in 1984, and traveled to Guatemala to bring him to the United States in 1986. According to an annotation on the immunization record, the entries appear to have been copied from another document and the immunization record itself is unclear as to what initial entries were made by the County of Los Angeles. The applicant did not respond to the director's Notice of Intent to Deny issued on September 27, 2004.

We note also that the applicant stated that she was out of the United States only three times during the qualifying period, the earliest of which was September 20, 1984. However, the applicant's marriage certificate indicates that she was married in Guatemala on February 24, 1984. 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).

Given the absence of any contemporaneous documentation, the unresolved inconsistency involving her marriage, and the lack of sufficient and corroborative detail in the employment letters, it is concluded that the applicant has failed to establish continuous residence in the U.S. for the required period.

The record reflects that the applicant was convicted in the Superior Court of Los Angeles on January 18, 1995 of a violation of the California Penal Code 470, misdemeanor forgery. Forgery is a crime involving moral turpitude. *Matter of S - C -*, 3 I&N Dec. 350 (BIA 1949).

An alien is inadmissible if he or she has been convicted of a crime involving moral turpitude (other than a purely political offense), or an attempt or a conspiracy to commit such crime. Section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act). Pursuant to 8 C.F.R. § 245a.18(c)(2), grounds of inadmissibility under this section of the Act (crimes involving moral turpitude) may *not* be waived.

The most commonly accepted definition of a crime involving moral turpitude is an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man. *Jordan v. DeGeorge*, 341 U.S. 223, reh'g denied, 341 U.S. 956 (1951).

However, section 212(a)(2)(A)(ii)(II) of the Act provides that an exception to the inadmissibility provision exists if the maximum penalty possible for the crime of which the alien was convicted did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of six months (regardless of the extent to which the sentence was

ultimately executed). Forgery is punishable by imprisonment in the state prison or by imprisonment in the county jail for not more than one year. California Penal Code, section 473. The applicant was sentenced to 24 months in the Los Angeles County Jail and placed on summary probation for a term of 24 months.

As the crime of forgery in California is punishable in the county jail for a period not to exceed one year and the applicant was not sentenced to a term of imprisonment exceeding six months, she is eligible for the inadmissibility exception that is contained at section 212(a)(2)(A)(ii)(II) of the Act.

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