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**U.S. Citizenship  
and Immigration  
Services**

22



FILE: [Redacted]  
MSC 02 102 60013

Office: LOS ANGELES

Date: **FEB 06 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: 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 be "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 district director determined that the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The director also determined that the applicant had been absent from the United States for over 45 days, and had failed to establish that an emergent reason had delayed her return. Accordingly, the director denied the application.

On appeal, the applicant only asserts that she has submitted sufficient documentation to establish her entry into the United States prior to January 1, 1982.

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).

At the time the applicant filed her LIFE application, the applicant submitted only her son's California school immunization record, which reflects vaccinations given on January 30, 1988 and April 27, 1988, and a letter dated May 14, 2003 from [REDACTED] of Ascension Episcopal Church in Tujunga, California, who indicated that the applicant has been attending church services since 1982 and in 1983 she became an active member until 1991. [REDACTED] asserted that he has served as a priest at the church for the last three years.

letter has little evidentiary weight or probative value as it does not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, the reverend does not explain the origin of the information to which he attests. Regarding the immunization record, it is not known where the applicant's son *actually* received his vaccination in 1988 and, therefore, said record cannot serve as evidence of the applicant's residence in the United States during 1988.

On June 10, 2003, the director issued a Form I-72 requesting that the applicant submit corroborating evidence from each affiant that would attest to her presence in the United States during the requisite period. The applicant, in response, submitted only an affidavit notarized July 3, 2003 from [redacted] of Annapolis, Maryland, who indicated that she first met the applicant at an Avon meeting at the applicant's home in California in December 1981.<sup>1</sup> [redacted] asserted, "there was even a time when I was in a little financial problem and she allowed us to stay at her home," and that she has remained in contact with the applicant since that time.

[redacted] however, failed to provide the applicant's address during this period in question and, therefore, the affidavit has little evidentiary weight or probative value.

On November 9, 2004, the director issued a Notice of Intent to Deny, advising the applicant that the affidavits lacked probative value to support her claimed residence as they did not contain sufficient information and corroborative documents. The applicant was given 30 days in which to submit a rebuttal. The applicant, however, failed to respond to the notice.

The applicant claims to have been residing in the United States since 1981, but only provides affidavits from two affiants whose documents lacked evidentiary weight and probative value. The applicant has not provided any documentation such as lease agreements, utility bills or rent receipts either in her or her spouse's name during the requisite period in order to corroborate her claim to have resided in the United States since before January 1, 1982 through May 4, 1988. In addition, no declaration from her husband has been provided in an effort to establish her residence and presence in the United States during the period in question. Given the absence of any contemporaneous documentation along with the applicant's reliance on minimal documentation raised questions regarding the credibility of the claim.

The regulation at 8 C.F.R. § 245a.12(e) provides that "[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods." Preponderance of the evidence is defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5<sup>th</sup> ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991). Given the virtual absence of contemporaneous documentation, and the insufficiency of the affidavits 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.

"Continuous residence" is defined in the regulations at 8 C.F.R. § 245a.15(c)(1), as follows:

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<sup>1</sup> Even though the affidavit was notarized it noted that the notary's commission had expired on July 1, 2003.

*Continuous residence.* An alien shall be regarded as having resided continuously in the United States if:

- (1) No single absence from the United States has exceeded *forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed. [Emphasis added.]

In her Notice of Intent to Deny, the director indicated that there were inconsistencies between the applicant's documents, applications and testimony, which impact the credibility of the applicant's claim. Specifically, at the time of her interview on March 29, 1996, in order to determine the applicant's eligibility of class membership, the applicant informed the interviewing officer that she was absent from the United States from February 1983 to April 1983 and in October 1987. When questioned that her son's birth certificate reflected that she was in Mexico at the time it was registered on March 14, 1988, the applicant indicated that she departed the United States in October 1987 and did not return until 1988. The record also contains a statement signed by the applicant indicating that she arrived in the United States in July 1981, departed to Mexico in July 1982, returned to the United States in April 1983, departed to Mexico in October 1987 and returned to the United States in November 1987. At the time of her LIFE interview on June 10, 2003, the applicant, in a signed sworn statement, listed her absences from the United States as follows:

February 1983 to March 1983 for three weeks to get married  
October 1987 to November 1987 for four weeks for the birth of her son.

When questioned about her previous statement that she departed in July 1982 and did not return to the United States until April, 1983, the applicant asserted that at the time she was very nervous and was under pressure to make her statement. In addition, the applicant's Form G-325A, Biographic Information indicates that she was married on February 28, 1983 in Mexico. The applicant, however, only listed her departure in October 1987 on her Form I-687 application. The applicant, in the Notice of Intent to Deny, was provided the opportunity to explain the discrepancies. The applicant did not respond to the Notice of Intent to Deny and has not addressed this issue on appeal.

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). Accordingly, the applicant's unsupported statement does not constitute competent objective evidence.

The applicant has, therefore, failed to establish that she resided in *continuous* unlawful status in the United States from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act. Therefore, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

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