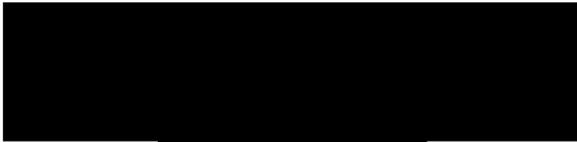




U.S. Citizenship
and Immigration
Services

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invasion of personal privacy



FILE:

MSC 02 116 60335

Office: Los Angeles

Date: FEB 15 2007

L2

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. 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.

A handwritten signature in black ink, appearing to be "R. 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 (AAO) on appeal. The appeal will be dismissed.

The district 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 reiterates her claim of continuous residence in the United States since prior to January 1, 1982 and asserts that she has submitted sufficient documentation to support that claim.

Although a Notice of Entry of Appearance as Attorney or Representative (Form G-28) has been submitted, the individual is not authorized under 8 C.F.R. § 292.1 or 8 C.F.R. § 292.2 to represent the applicant. Therefore, this decision will be furnished to the applicant only.

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 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).

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.

At issue 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 Immigration and Nationality Act (Act) on or about December 9, 1995. 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 listed '██████████' in Harbor City, California as her only residence in this country from December 1981 through December 1992. In addition, at part #35 of the Form I-687 application where applicants were asked to list all absences from the United States since first entry, the applicant listed only one absence from this country of an unspecified length when she traveled to Mexico to buy medicine and take a vacation from February 1988 to March 1988.

In support of her claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted an affidavit that is signed ██████████. ██████████ stated that the applicant had been his friend since December of 1981 and he had personal knowledge that the applicant traveled to Mexico to buy medicine and take a vacation from February 17, 1988 to March 15, 1988. However, other than attesting applicant's purported absence from the United States, ██████████ failed to provide any specific and verifiable testimony relating to the applicant's residence in this country during that period from prior to January 1, 1982 to May 4, 1988.

The applicant included five affidavits of residence that are signed by ██████████ and ██████████ respectively. Each of the affiants stated that they had personal knowledge that the applicant continuously resided in the United States since 1981. However, the testimony contained in these five affidavits lacks specificity as none of the affiants included any relevant and verifiable information, such as the applicant's address(es) of residence in this country from prior to January 1, 1982 to May 4, 1988.

The applicant included four affidavits of residence that are signed by ██████████ and ██████████, respectively. Each of the affiants declared that they had personal knowledge that the applicant continuously resided in the United States since December 1981. Although each of the affiants attested to the applicant's continuous residence in this country since December 1981, none of the affiants included any direct and specific testimony, such as the applicant's address(es) of residence in that period from prior to January 1, 1982 to May 4, 1988, that would tend to corroborate her claim of residence in this country for the period in question.

The record shows that the applicant appeared for an interview relating to her Form I-687 legalization application at the Los Angeles, California District Office of the Immigration and Naturalization

Service or the Service (now Citizenship and immigration services or CIS) on April 23, 1996. The notes of the interviewing officer reflect that during the course of this interview, the applicant testified under oath that her first entry into the United States occurred in 1988. The applicant further testified under oath that she was married in Guatemala in 1984 and had three children born in Guatemala in 1983, 1985, and 1987, respectively. The record contains a signed sworn statement written by the applicant in her own hand and in her native language of Spanish that states: "Del ano de 1988 me he quedado a vivir aqui en los EE. UU." The English translation of the applicant's signed sworn statement is "In the year 1988, I remained to live here in the United States." The applicant's admissions that she was married in Guatemala in 1984, had three children born in that country between 1983 and 1987, and entered the United States for the first time in 1988 and remained thereafter to live here seriously impairs the credibility of her claim that she resided in this country prior to January 1, 1982 to May 4, 1988, as well as the credibility of any and all documents submitted in support of that claim.

The record shows that the applicant filed her Form I-485 LIFE Act application with the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services or CIS) on January 24, 2002. On the Form G-325A, Record of Biographic Information, which accompanied her Form I-485 LIFE Act application, the applicant indicated that she married her husband in Guatemala on August 27, 1984. The fact that the applicant again admitted that she was absent from the country when she was married in Guatemala on August 27, 1984 directly contradicted her prior testimony that she had only been absent from this country on one occasion when she traveled to Mexico to buy medicine and take a vacation from February 1988 to March 1988. The fact that the applicant failed to list this additional absence, as well as the length and date of the absence, further diminished the credibility of her claim of residence.

Subsequent to the filing of her Form I-485 LIFE Act application, the applicant submitted five affidavits of residence that are signed by [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED] respectively. Each of the affiants stated that they had personal knowledge that the applicant came to the United States for the first time in 1981. However, none of these affiants directly testified that the applicant had continuously resided in this country rather all merely testified that she came to this country for the first time in 1981. Even if the testimony contained in the affidavits is viewed in a manner most favorable to the applicant's claim of residence in this country since prior to January 1, 1982, such testimony lacks specificity as none of the affiants included any relevant and verifiable information, such as the applicant's address(es) of residence in this country during the requisite period.

On June 22, 2004, the district director issued a notice of intent to deny to the applicant informing her of CIS' intent to deny her LIFE Act application because she had failed to submit sufficient credible evidence of continuous lawful residence in the United States for the period in question. The applicant was granted thirty days to respond to the notice and provide additional evidence in support of her claim of residence in the requisite period.

In response, the applicant submitted two new affidavits of residence from individuals that had previously provided supporting documentation in these proceedings. The first of these affidavits is signed by [REDACTED]. [REDACTED] testified that she first met the applicant through a mutual

friend at a bus stop in December 1981 and that she and the applicant became very good friends. [REDACTED] declared that she had personal knowledge that the applicant resided in Harbor City, California since December 1981. The second affidavit is signed by [REDACTED] who stated that she first met the applicant through a mutual friend at a family party in December 1981 and that she and the applicant subsequently became very good friends. [REDACTED] testified that she had personal knowledge that the applicant resided in Harbor City, California since December 1981. While both affiants testified that the applicant resided in this country since December 1981, such testimony cannot overcome the fact that the applicant admitted that she was married in Guatemala in 1984, had three children born in that country between 1983 and 1987, and entered the United States for the first time in 1988.

The district director determined that the applicant failed to submit sufficient 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 September 8, 2004.

On appeal, the applicant reiterates her claim of continuous residence in the United States since prior to January 1, 1982 and asserts that she has submitted sufficient documentation to support that claim. The applicant contends that her husband took most of the documents that would tend to support her claim of residence in this country for the requisite when he left the country some years ago while other supporting documentation was lost when she moved from one address to another.

The evidence submitted by the applicant relating to her residence in the United States from prior to January 1, 1982 lacks sufficient detail and contains little verifiable information, and is contradictory to the substance of the applicant's own testimony regarding her residence in this country for the requisite period. The applicant herself has diminished the credibility of such claim by admitting that she was married in Guatemala in 1984, had three children born in that country between 1983 and 1987, and entered the United States for the first time in 1988. While it is acknowledged that it may be difficult to obtain supporting documentation relating to a period that occurred some twenty years ago, the fact that the applicant lost supporting documentation over the years through various means is insufficient to explain the contradictions in the applicant's own testimony relating to her claim of residence in the United States for period in question.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the 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).

The absence of sufficiently detailed supporting documentation and the fact that the applicant herself provided contradictory testimony relating to her claim of residence seriously undermines the credibility of the supporting documents, as well as the credibility of the applicant's claim of residence in this country since prior to January 1, 1982 to May 4, 1988. 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 his burden of proof in establishing that he 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 reliance upon supporting documents with minimal probative value and the fact that she failed to disclose an absence of undetermined duration from this country in 1985, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through 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.

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