

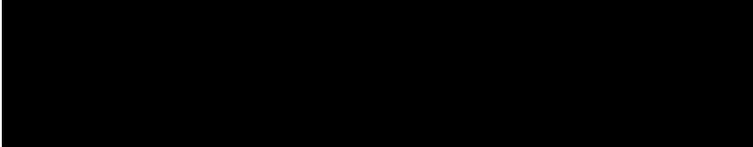
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]
MSC 02 121 60012

Office: LOS ANGELES

Date: **JUL 30 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. 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 District Director, Los Angeles, California, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The Administrative Appeals Office (AAO) rejected the appeal on November 14, 2006. On March 23, 2007, the AAO reopened the decision on service motion pursuant to 8 C.F.R. § 103.5(a)(5)(ii). The director's decision denying the application will be affirmed.

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 motion, counsel asserts that the applicant has "met her burden of proof by a preponderance of the evidence through her applications, oral testimony and extensive documentary evidence. Counsel resubmits her appellate brief and copies of previously submitted documentation in support of the motion.

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 notarized October 20, 1989 "self employment letter," the applicant stated that she had been in continuous residence in the United States since August 1981, and that from September 1981 to September 1986, she was self employed "doing various odd jobs and receiving 'cash' payment for [her] labor." In her November 17, 1988 Form I-687, Application for Status as a Temporary Resident, which she signed

under penalty of perjury, the applicant stated that she had lived at [REDACTED] in Glendale, California from August 1981 to June 1989, and that she was absent from the United States once during the qualifying period, from September to October 1986, when she traveled to Colombia for an unidentified emergency. The applicant also stated that she was self-employed as a housekeeper from September 1981 to September 1986, and at Glendale College in Glendale from October 1986 to October 1989.

We note that [REDACTED] signed the applicant's Form I-687 application, acknowledging that he was the person who prepared the form. Additionally, the applicant's self-employment letter discussed above was notarized by [REDACTED]. The record contains a copy of a Notice of Intent to Revoke the applicant's class membership in which the applicant was notified that, as the result of a large scale investigation into immigration fraud in Las Vegas, Phoenix and Los Angeles, both [REDACTED] and [REDACTED] were convicted in federal court of conspiracy to file false statements in violation of 18 U.S.C. § 371. [REDACTED] was also convicted of aiding and abetting and false statements in violation of 18 U.S.C. §§ 2 and 1001. [REDACTED] admitted that the self-employment letters that he prepared were fraudulent. [REDACTED] was convicted of filing fraudulent Legalization, SAW and class membership applications. The record does not contain a final revocation of the applicant's class membership; however, based on these convictions, information contained on the Form I-687 and in her self-employment letter is not credible.

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

1. A November 22, 1996 sworn statement from [REDACTED] who identified himself as the owner of R & R T-Shirt Printing Company, in which he stated that the applicant worked for his company from 1981 to 1984. [REDACTED] repeated this statement in a June 22, 2001 sworn statement. Mr. Lopez did not state in either of his statements whether the information regarding the applicant's employment was taken from company records, the duties of the applicant's job, her rate of pay or her address at the time of her employment with his company as required by 8 C.F.R. § 245a.2(d)(3)(i). Further, [REDACTED]'s letters conflict with the information on the applicant's Form I-687 application in which she stated that she worked as a self-employed housekeeper from 1981 to September 1987. The applicant submitted no objective documentation to corroborate her employment with R & R T-Shirt Printing Company. 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).
2. A November 20, 1996 notarized statement from [REDACTED] in which she stated that she had known the applicant since 1981, and that the applicant lived with [REDACTED] from 1982 to 1984. [REDACTED] did not indicate the circumstances of her first meeting with the applicant or her address at the time the applicant lived with her. [REDACTED] executed a sworn statement on June 13, 2001, in which she reiterated her statement regarding her employment of the applicant and further stated that the applicant had lived in the United States since 1981. The applicant stated on her Form I-687 application that she lived at one address from 1981 to 1989.
3. A November 21, 1996 notarized statement from [REDACTED], in which he stated that he had known the applicant since October 1981. [REDACTED] stated that the applicant is a "very loyal friend of the family." [REDACTED] did not state the circumstances of his initial acquaintance with the applicant or that she lived in the United States during the requisite period.

4. A November 22, 1996 notarized statement from [REDACTED], in which she stated that the applicant had been her "housekeeper/cleaning woman since 1981." [REDACTED] reiterated this statement in a June 14, 2001 sworn statement. The applicant stated on the Form I-687 application, however, that she worked as a housekeeper until 1986, when she then went to work for Glendale College.
5. A June 16, 2001 affidavit from [REDACTED], in which she stated that the applicant worked for her as a housekeeper from 1981 to 1985. [REDACTED] stated that she had known the applicant since the affiant lived in Colombia.
6. A copy of a Republic of Colombia passport issued to the applicant on July 2, 1986 in Bogotá. The passport contains an August 25, 1986 notation from the passport secretariat verifying the applicant's name. The applicant, however, stated on her Form I-687 application that she was present in the United States until September 1986. During her LIFE Act adjustment interview on April 30, 2003, the applicant executed a sworn statement in which she admitted that she traveled to Colombia in July 1986 for the purpose of bringing her daughter to the United States. The applicant stated that she returned to the United States on October 4, 1986 pursuant to a "tourist" visa.
7. A copy of a B1-B2 nonimmigrant visa issued to the applicant in July 7, 1986 in Bogotá, Colombia. This visa was subsequently canceled. However, the applicant was issued a new visa on August 25, 1986, valid for multiple entries until February 24, 1987. As discussed above, the applicant stated on her Form I-687 application that she did not leave the United State until September 1986; however she admitted during her LIFE Act adjustment interview that she was in Colombia in July 1986.
8. A Form I-94 reflecting that the applicant was admitted to the United States pursuant to a B-2 visa on October 4, 1986.
9. A State of California identification card issued to the applicant on October 7, 1986. The card lists the applicant's address as [REDACTED] in Glendale, California. On her Form I-687 application, the applicant claimed to have live at [REDACTED] in Glendale throughout the qualifying period.
10. A June 8, 2001 letter from Glendale Community College signed by [REDACTED], Employee Services Senior Technician. [REDACTED] verified that the applicant was employed as a temporary worker with the college from October 15, 1986 to May 4, 1988. The letter from Glendale Community College does not comply with the requirements of 8 C.F.R. § 245a.2(d)(3)(i), in that it does not state whether the information was taken from company records or the applicant's address at the time of her employment. The applicant, however, submitted copies of pay slips reflecting wages paid to her by the college during the qualifying period in October, November and December 1986; and January, September, October, and November 1987.
11. Copies of Forms W-2, Wage and Tax Statements, issued to the applicant by Le Patissier for the years 1987 and 1988. The applicant's address is listed as [REDACTED] in Glendale. The applicant did not state that she worked at Le Patissier at any time during the requisite period or

that she lived at [REDACTED]. The applicant, however, submitted copies of pay slips indicating that she worked for Le Patisserie and Foodmaker, Inc. in 1987 and 1988.

12. Copies of Forms 1040, U.S. Individual Income Tax Return, for the years 1987 and 1988. However, these documents are not signed and there is no indication in the record that they were ever filed with the Internal Revenue Service.
13. A copy of a Social Security earnings record indicating that wages were first reported for the applicant in 1986.
14. A November 20, 1996 notarized statement from [REDACTED] in which she stated that she had known the applicant since 1986. [REDACTED] did not state under what circumstances she met the applicant and did not indicate that the applicant lived in the United States during the qualifying period.

In response to a request for evidence issued on April 30, 2003, the applicant submitted the following declarations:

1. A May 5, 2003 declaration from [REDACTED] in which she stated that the applicant had cleaned her house in Sunland "since 1981."
2. A May 5, 2003 declaration from [REDACTED], in which she stated that the applicant lived with her in Sunland, California from 1982 to 1984.
3. A copy of a May 8, 2003 declaration from [REDACTED], in which he stated that from 1981 to 1984, the applicant "occasionally" cleaned his business. As with his previous statements, [REDACTED] did not provide the information required by 8 C.F.R. § 245a.2(d)(3)(i).
4. A May 5, 2003 declaration from [REDACTED] in which he stated that he met the applicant in 1981 while he was working as a gardener.
5. A May 5, 2003 declaration from [REDACTED], in which she stated that she met the applicant in Colombia in 1970, and that she saw the applicant in 1981 as the applicant cleaned her house at the time. [REDACTED] stated that she lived in Los Angeles at that time.

In response to the director's Notice of Intent to Deny dated October 5, 2004, the applicant submitted the following additional documentation in support of her application:

1. An October 15, 2004 sworn statement and an October 19, 2004 affidavit from [REDACTED] in which she expanded on her previous statements. [REDACTED] now stated that she met the applicant in 1981 through a neighbor, [REDACTED], in Sunland, California, when she was looking for someone to clean her home. She further stated that the applicant moved in with [REDACTED] in June 1982, and remained her neighbor until "late 1984, early 1985." At that time, [REDACTED] moved to Arleta and the applicant moved to Glendale. [REDACTED] stated that in 1986, she assisted the applicant in getting a job at Glendale College where she worked.

2. An October 20, 2004 sworn statement and an "affidavit" from [REDACTED] in which she expanded upon her previous statements. [REDACTED] stated that she met the applicant in 1981 through a mutual friend, and that in 1982, she offered to help the applicant by inviting the applicant to live with her family. [REDACTED] stated that the applicant lived in Sunland, California from October 1981 to December 1984, and lived with her in Sunland for approximately two years.
3. An October 18, 2004 affidavit from [REDACTED]. [REDACTED] stated that she "currently" goes by the name of [REDACTED] and that she met the applicant in Colombia, and that the applicant began living in Glendale in 1981 before moving to Sunland in 1982. [REDACTED] stated that the applicant cleaned house for her when she lived in Burbank and that after the applicant's return from Colombia in 1986, they began cleaning houses together.

The supporting statements and affidavits attest to the applicant's residence in Sunland, California for at least two years during the qualifying period. However, the applicant again failed to submit competent, objective evidence to explain her statement on her Form I-687 application that she lived at one address in Glendale, California from 1981 to 1989. The applicant submitted no competent objective evidence to corroborate her employment from 1981 to 1986, or that she lived with [REDACTED] during the period stated. *See Matter of Ho*, 19 I&N Dec. at 591.

The applicant submitted conflicting statements regarding her residency during the required period. Further, she submitted no corroborative documentation of her employment prior to 1986. Accordingly, the applicant has not established by a preponderance of the evidence that she resided continuously in the United States in an unlawful status during the requisite period.

Additionally, the applicant stated on her April 30, 2003 affidavit that she had been absent from the United States from July to October 4, 1986. She stated that the purpose of her trip was to get a visa for herself and her daughter. The record reflects that the applicant was issued a Colombian passport of July 2, 1986 and was initially issued a B-2 visa on July 7, 1986. The record thus reflects that the applicant was in Colombia as early as July 2, 1986. Therefore, the record reflects that the applicant was out of the United States for a period of approximately 93 days.

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

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.]

¹ The notary's attestation on the "affidavit" has been x-ed through and therefore apparently voided.

While not dealt with in the director's decision, there must, nevertheless, be a further determination as to whether the applicant's prolonged absence from the U.S. was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988) holds that *emergent* means "coming unexpectedly into being."

The record reflects that the applicant was granted a United States visa on August 25, 1986, the stated purpose of her trip; however she did not enter the United States until October 4, 1986. The applicant did not allege that an unexpected event prevented her from returning to the United States within 45 days.

Accordingly, the applicant's 93-day stay in Colombia, from July to October 1986, interrupted her "continuous residence" in the United States. The applicant has, therefore, failed to establish that she resided in the United States in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required by the statute, section 1104(c)(2)(B)(i) of the LIFE Act, and the regulations, 8 C.F.R. § 245a.11(b) and 15(c)(1). Given this, she is ineligible for permanent resident status under section 1104 of the LIFE Act.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa application proceedings, the burden of proving eligibility for the benefit sought remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the motion will be dismissed.

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