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Office: Phoenix

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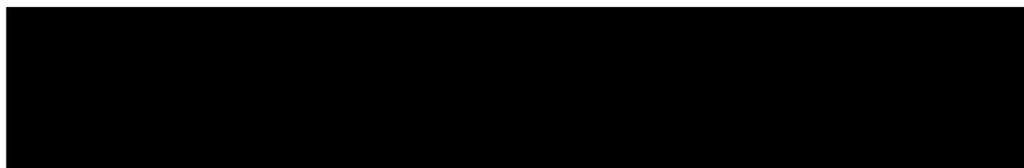
Applicant:



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:



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 application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Phoenix, Arizona, and is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant had failed to submit sufficient evidence to establish that she resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act. In addition, the district director determined that the applicant admitted that she had been absent from this country for three months from September 1987 to December 1987, and, therefore, exceeded the forty-five (45) day limit for a single absence from the United States during this period, as set forth in 8 C.F.R. § 245a.15(c)(1)(i). Finally, the district director determined that the applicant had failed to establish that she satisfied the “basic citizenship skills” required under section 1104(c)(2)(E) of the LIFE Act. Therefore, the director concluded that the applicant was ineligible to adjust to permanent residence under the provisions of the LIFE Act and denied the application.

On appeal, counsel reiterates the applicant’s claim of continuous residence in this country for the requisite period and requests that the applicant be provided the opportunity to submit evidence to demonstrate that she is competent in the English language. Counsel asserts that the local district office of Citizenship and Immigration Services or CIS (the successor to the Immigration and Naturalization Service or the Service) is applying standards that are too stringent when compared to other CIS district offices. Counsel also indicates that a brief and/or additional evidence in support of the applicant’s appeal would be forthcoming within thirty days. However, as of the date of this decision, neither counsel nor the applicant has submitted a statement, brief, or additional evidence to supplement 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. See § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b).

“Continuous unlawful residence” is defined at 8 C.F.R. § 245a.15(c)(1), as follows:

An alien shall be regarded as having resided continuously in the United States if 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.]

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).

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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

8 C.F.R. § 245a.2(d)(3)(v) states that attestations by churches, unions, or other organizations to the applicant's residence by letter must: identify applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

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. In addition, the applicant has acknowledged that she broke her continuous residence in this country for the requisite period by admitting that she had been absent from this country for three months September 1987 to December 1987.

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 January 2, 1990. At part #11 of the Form I-687 application where applicants were asked to list their marital status,

the applicant checked "never married." In addition, at part #33 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant listed [REDACTED] in Phoenix, Arizona as her sole residence in this country without listing the dates she had resided at this address. Further, at part #35 of the Form I-687 application where applicants were asked to list all absences from the United States beginning from January 1, 1982, the applicant listed an absence from this country from October 1987 to December 1987 when she traveled to Mexico because of "emergencies." The record shows that the applicant failed to include any evidence to support her claim of continuous residence in the United States for the requisite period.

The applicant subsequently filed her Form I-485 LIFE Act application on June 21, 2002. At part #3B of the Form I-485 LIFE Act application, where applicants were asked to list immediate family members, the applicant listed [REDACTED] as her husband. Furthermore, 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 Jalisco, Mexico in November 1987. While the applicant also included a copy of a Mexican marriage certificate that reflects that her marriage to her husband was registered in the municipality of Cihuatlan in Jalisco, Mexico on November 21, 1988, it is clear that the applicant was married well before she submitted her Form I-687 application on January 2, 1990. The applicant's admission that she was married before such date directly contradicted her prior testimony at part #11 of the Form I-687 application that she had never been married. The fact that the applicant failed to disclose that she was married on the Form I-687 application seriously undermines her credibility.

The applicant submitted a copy of a Mexican birth certificate reflecting that her daughter, [REDACTED] was born in the municipality of Cuautitlan in Jalisco, Mexico on October 28, 1987 and that both the applicant and the father of the child were present when their daughter's birth was registered in this same municipality on December 4, 1987. The applicant also provided a letter from the director of the Department of Health for the municipality of Cihuatlan that states that the applicant was hospitalized on October 28, 1987 for the obstetric resolution of her pregnancy that terminated in the birth of a female child without complications.

In support of her claim of continuous residence in this country since prior to January 1, 1982, the applicant included a letter containing the seal of St. Catherine of Siena Church in Phoenix, Arizona that is dated May 28, 2002. The letter is signed by [REDACTED] who listed his position as pastor. In his letter, [REDACTED] provided the applicant's most current address and stated that the applicant was a registered parishioner at this religious institution since 1980. [REDACTED] declared that the applicant and her family attended Mass at the church. Although [REDACTED] listed the applicant's current address of residence as of the date of the letter, he failed to provide a listing of her address(es) of residence during the entire period that she was a parishioner of St. Catherine of Siena Church beginning in 1980 as required under 8 C.F.R. § 245a.2(d)(3)(v).

The applicant submitted a copy of her daughter's State of Arizona Certificate of Live Birth that reflects that her daughter [REDACTED] was born in Phoenix, Arizona on July 16, 1986, and that such birth was registered on August 13, 1986. While this contemporaneous document established that the applicant was present in the United States to give birth to [REDACTED] she failed to submit any verifiable and credible evidence of her residence in this country in those periods from prior to January 1, 1982 up to July 16, 1986 and from after the date her daughter's birth was registered on August 13, 1986 to May 4, 1988. Consequently, it cannot be concluded that 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.

The record shows that the applicant was subsequently interviewed at CIS's Phoenix, Arizona District Office regarding her Form I-485 LIFE Act application on August 23, 2004. The notes of the interviewing officer reflect that applicant testified under oath that she had been absent from this country for three months when she traveled to Mexico from September 1987 to December 1987 because her mother was ill with cancer and needed an operation. The applicant further testified that she was pregnant when she undertook this trip but there were no subsequent problems with either her pregnancy or the birth of her child. As noted above, the Mexican birth certificate of her daughter, [REDACTED], demonstrates that applicant's daughter was born on October 28, 1987 and the applicant remained in Mexico to register her daughter's birth on December 4, 1987. Even if the applicant had departed the United States on September 30, 1987 and then returned to this country on December 5, 1987, the minimum length of her absence was sixty-five days. As such, it must be concluded that the applicant's admitted absence from the United States from September 1987 to December 1987 exceeded the forty-five (45) day limit for a single absence from the United States during this period, as set forth in 8 C.F.R. § 245a.15(c)(1)(i). The applicant failed to assert that her return to this country was delayed by an emergent reason. Consequently, the applicant cannot be considered to have continuously resided in the United States for the requisite period pursuant to 8 C.F.R. § 245a.11(b), because her prolonged absence exceeded the forty-five day limit for a single absence.

On appeal, counsel reiterates the applicant's claim of continuous residence in this country for the requisite period and asserts that the local district office of CIS is applying standards that are too stringent when compared to other CIS district offices. However, counsel failed to submit any evidence to substantiate this assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

As has been discussed, the applicant submitted a contemporaneous document, the Arizona birth certificate of her daughter [REDACTED] which tends to establish that she was more likely than not residing in the United States for that period from July 16, 1986, the date of her daughter's birth, through the date such birth was registered on August 13, 1986. The absence of any independent verifiable supporting documentation for those periods from prior to January 1, 1982 up to July 16, 1986 and from after the date her daughter's birth was registered on August 13, 1986 to May 4, 1988 seriously undermines the credibility of the applicant's claim of residence in this country for the entire requisite period. The applicant has diminished her own credibility as well as the credibility of her claim of continuous residence in this country for such period by failing to disclose on the Form I-687 application that was submitted on January 2, 1990 that she was married in 1988 and then subsequently providing contradictory testimony on the Form I-485 LIFE Act application and through independent evidence that demonstrates that she was married in Mexico well before the Form I-687 application had been submitted. Moreover, the applicant has acknowledged that she was absent from the United States for a minimum of sixty-five days between September 1987 and December 1987 when she traveled to Mexico. 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 her burden of proof in establishing that she has resided in the United States for the entire requisite period 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).

The applicant has specifically admitted that she exceeded the forty-five day limit for a single absence from this country when she departed to Mexico in September 1987, and did not return to the United States until December 1987. The applicant has failed to assert that an emergent reason delayed her return to the United States. Further, the applicant has failed to submit sufficient evidence to establish that she resided in continuous 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.

The next issue to be examined in this proceeding is whether the applicant has established that she satisfied the "basic citizenship skills" required under section 1104(c)(2)(E) of the LIFE Act.

Under section 1104(c)(2)(E)(i) of the LIFE Act ("Basic Citizenship Skills"), an applicant for permanent resident status must demonstrate that he or she:

meets the requirements of section 312(a) of the Immigration and Nationality Act (8 U.S.C. 1423(a))(relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States); or

is satisfactorily pursuing a course of study (recognized by the Attorney General) to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

Under section 1104(c)(2)(E)(ii) of the LIFE Act, the Attorney General may waive all or part of the above requirements for aliens who are at least 65 years of age or developmentally disabled.

The applicant, who is neither 65 years old nor developmentally disabled, does not qualify for either of the exceptions in section 1104(c)(2)(E)(ii) of the LIFE Act. Nor does she satisfy the “basic citizenship skills” requirement of section 1104(c)(2)(E)(i)(I) of the LIFE Act because she does not meet the requirements of section 312(a) of the Immigration and Nationality Act (Act). An applicant can demonstrate that he or she meets the requirements of section 312(a) of the Act by “[s]peaking and understanding English during the course of the interview for permanent resident status” and answering questions based on the subject matter of approved citizenship training materials, or “[b]y passing a standardized section 312 test . . . by the Legalization Assistance Board with the Educational Testing Service (ETS) or the California State Department of Education with the Comprehensive Adult Student Assessment System (CASAS).” 8 C.F.R. §§ 245a.3(b)(4)(iii)(A)(I) and (2).

In the alternative, an applicant can satisfy the basic citizenship skills requirement by demonstrating compliance with section 1104(c)(2)(E)(i)(II) of the LIFE Act. The “citizenship skills” requirement of section 1104(c)(2)(E)(i)(II) is defined by regulation in 8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3). As specified therein, an applicant for LIFE Legalization must establish that:

He or she has a high school diploma or general education development diploma (GED) from a school in the United States . . . 8 C.F.R. § 245a.17(a)(2), or

He or she has attended, or is attending, a state recognized, accredited learning institution in the United States, and that institution certifies such attendance. The course of study at such learning institution must be for a period of one academic year (or the equivalent thereof according to the standards of the learning institution) and the curriculum must include at least 40 hours of instruction in English and United States history and government. . . . 8 C.F.R. § 245a.17(a)(3).

Both 8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3) specify that applicants must submit evidence to show compliance with the basic citizenship skills requirement “...either at the time of filing Form I-485, subsequent to filing the application but prior to the interview, or at the time of the interview.”

The regulation at 8 C.F.R. § 245a.17(b) states:

An applicant who fails to pass the English literacy and/or the United States history and government tests at the time of the interview, shall be afforded a second

opportunity after 6 months (or earlier at the request of the applicant) to pass the tests or submit evidence as described in paragraphs (a)(2) and (a)(3) of this section [8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3)]. The second interview shall be conducted prior to the denial of the application for permanent residence and may be based solely on the failure to pass the basic citizenship skills requirements.

Pursuant to 8 C.F.R. § 245a.17(b), the applicant was interviewed twice in connection with her LIFE Act application, on August 22, 2003 and again on August 23, 2004. On both occasions, the applicant failed to pass tests demonstrating a minimal knowledge of both the English language and United States history and government. Furthermore, the applicant did not provide evidence of having passed a standardized citizenship test, as permitted by 8 C.F.R. § 312.3(a)(1). The applicant in this case does not have a high school diploma or a GED from a United States school, and therefore does not satisfy the regulatory requirement of 8 C.F.R. § 245a.17(a)(2). Nor did the applicant provide evidence to demonstrate that she attended a state recognized, accredited learning institution in the United States that provides a course of study for a period of one academic year (or the equivalent thereof according to the standards of the learning institution) with curriculum including at least 40 hours of instruction in English and United States history and government as allowed under 8 C.F.R. § 245a.17(a)(3).

On appeal, counsel requests that the applicant be provided the opportunity to submit evidence to demonstrate that she is competent in the English language. However, the pertinent regulations at 8 C.F.R. § 245a.17(a)(2) and 8 C.F.R. § 245a.17(a)(3) specify that an applicant must submit evidence demonstrating compliance with the basic citizenship skills requirement in that period from the date the Form I-485 LIFE Act application is filed to the date the second interview is conducted. The applicant in this particular case failed to submit evidence to establish compliance with the basic citizenship skills requirement in that period from the date she submitted her Form I-485 Life Act application on June 21, 2002 to the date of her second interview on August 23, 2004.

Therefore, the applicant does not satisfy either alternative of the “basic citizenship skills” requirement set forth in section 1104(c)(2)(E)(i) of the LIFE Act. Accordingly, the applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act on this basis as well.

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