

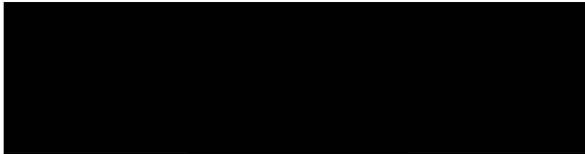


U.S. Citizenship
and Immigration
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FILE:



MSC 01 286 60083

Office: LOS ANGELES

Date: MAY 04 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.

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 denied the application because 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 denied the application because the applicant had not established that she had applied for class membership in any of the requisite legalization class-action lawsuits prior to October 1, 2000.

The director determined that the record failed to contain evidence that the applicant had applied for class membership in either *Catholic Social Services, Inc. (CSS)* or *League of United Latin American (LULAC)* class action lawsuits. A review of the record, however, does not indicate the Director, Missouri Service Center, who has jurisdiction in this matter, determined that the applicant was not in class.

On appeal, the applicant asserts that she has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. The applicant provides copies of previously submitted documents 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. 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).

Here, the submitted evidence is not relevant, probative, and credible. In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence:

- Pay stubs from [REDACTED] in Los Angeles, California allegedly dated in 1980, 1982, and 1983. Most of the pay stubs do not list the applicant's name while one was simply addressed to an individual named [REDACTED]
- Several pay stubs from [REDACTED] issued subsequent to the requisite period along with a letter dated April 12, 1990, from Daven Jee, general manager of [REDACTED] who attested to the applicant's employment since June 1988.
- Two receipts dated in January and June 1982 as well as a receipt issued in March 1982 which listed the applicant's California address as [REDACTED], Monterey Park.
- A letter dated June 28, 1990 written in the Spanish language with the required English translation from [REDACTED] Mr. [REDACTED] indicated that the applicant was employed as a housekeeper in his home at [REDACTED], Marina del Rey, California from February 12, 1981 to August 15, 1984.
- A California identification card (ID) issued on February 25, 1981, which listed the applicant's address as [REDACTED] Los Angeles.
- A California ID card issued on March 24, 1988, which listed the applicant's address as [REDACTED] Street, Los Angeles.
- An uncertified Form 1040, Income Tax Return and a partially illegible wage and tax statement for 1988.
- A patient's appointment schedule reflecting appointment dates in 1984 and 1985. The document does not list the applicant's name.
- A document from the Department of Public Social Services containing a hand-written date of May 13, 1986.
- A change of address card from the California Department of Motor Vehicles (DMV) indicating the DMV was notified on April 18, 1991. It is noted that this document appears to have been signed and dated by an employee of the DMV on January 1, 1986.
- A PS Form 3849, delivery notice/reminder/receipt dated May 14, 1986.

The applicant also submitted two letters from [REDACTED]. In his initial letter dated July 12, 1990, written in the Spanish language with the required English translation, Mr. [REDACTED] indicated that the applicant was employed as a housekeeper and babysitter from October 18, 1984 to June 10, 1988. In his subsequent letter dated December 12, 1994, [REDACTED] indicated that the applicant was employed as a housekeeper from March 1981 to November 1987.

On September 3, 2004, the director issued a Notice of Intent to Deny, advising the applicant that the several of the documents submitted were deemed not credible. Specifically: 1) the Department of Public Social Services document dated May 13, 1986 had a revision dated of October 1990; 2) the document from the DMV with signature and date of January 1986 had a revision dated of October 1990; 3) the post office receipt dated May 1986 had a revision date of March 1989; and 4) two of the pay stubs from [REDACTED] Motel appeared to have an altered date.

The applicant, in response, asserted that her California ID card issued on February 25, 1981 established her presence in the United States prior to January 1, 1982. Regarding the pay stubs, the applicant asserted that the director's notice is "non-specific as to which 2 paycheck stubs appear to have been altered." The applicant reaffirmed her employment with [REDACTED] in 1988. The applicant provided copies of the documents previously provided with her LIFE application as well as a copy of her tax refund check issued by the Internal Revenue Service on January 31, 1992. Regarding the document from the Department of Public Social Services, the applicant stated:

The original of this document (I-3) is 2-sided. One side is in English, the other side is in Spanish. This document was not intended to be a dated document. I believe this date marking to be a clerical error in preparing my immigration package.

Regarding the document from the DMV, the applicant stated:

The document from the Department of Motor Vehicles (I-4) has a stamped dated of April 18, 1991, therefore, it wouldn't have been advantageous to my case to attempt to change or reflect the date differently.

The applicant asserted that these documents (using the revision date of 10/90) were outside of the required period of January 1, 1982 through May 4, 1988 and should never have been submitted with her immigration package.

Regarding the receipt from the post office, the applicant stated:

I was unable to locate this document within my package. However, a document with a revision date of March 1989 would be outside of the required time frame of January 1, 1982 through May 4, 1988. I believe that any such dated document was a clerical error and should not have been submitted with the immigration package.

The applicant's California ID card may serve to establish the applicant's presence in the United States before January 1, 1982, but it does not establish *continuous* unlawful residence during the requisite period. The applicant claimed to have resided in the United States since 1981, but provided no evidence, such as lease agreements, rent receipts utility bills or attestations from affiants to corroborate her claim.

The receipt issued in March 1982 which listed the applicant's California address as [REDACTED] Monterey Park contradicts her claim on her Form I-687 application to have resided at this address commencing in March 1988.

The employment affidavits from Mr. [REDACTED] and Mr. [REDACTED] have little evidentiary weight or probative value as the affiants failed to provide a telephone number or address and, therefore, the affidavits are not amenable to verification by the Citizenship and Immigration Services. Furthermore as conflicting statements have been

provided, it is reasonable to expect an explanation from [REDACTED] in order to resolve the contradictions. However, no statement from Mr. [REDACTED] has been submitted to resolve his contradicting affidavits.

The applicant's explanations for each discrepancy outlined by the director have been considered. However, the fact remains that the record does contain pay stubs from [REDACTED] dated in 1980, 1982 and 1983; a period of time that the applicant herself said she was not employed at the motel. This factor tends to establish that the applicant utilized documents in a fraudulent manner in an attempt to support her claim of residence in the United States during the requisite period. By engaging in such an action, the applicant has irreparably harmed her own credibility as well as the credibility of her claim of continuous residence in the United States for requisite period.

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).

Given the credibility issues arising from the documentation 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.

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