

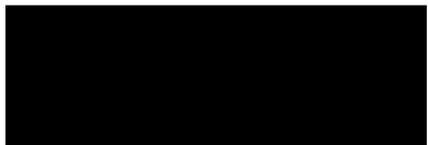
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U.S. Department of Homeland Security
20 Mass. Ave. N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]
MSC 03 245 64300

Office: LOS ANGELES

Date: NOV 21 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. 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 read "D. King" or similar, with a large flourish underneath.

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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application finding: 1) the applicant failed 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; and 2) the applicant's misdemeanor charges rendered her statutorily ineligible for the immigration benefit discussed herein.¹ While the AAO concurs with the district director's determination regarding the first finding, it appears that the second finding was erroneously included as part of the denial and is hereby withdrawn.² Therefore, the sole issue to be addressed in this decision is the applicant's claim of unlawful residence in the United States during the statutorily relevant time period.

On appeal, counsel maintains her claim of eligibility under provisions of the LIFE Act and explains her prior, seemingly inconsistent, statements with regard to her entry into the United States.

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 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.

¹ The director determined that the applicant's LIFE application is denied as of February 14, 2007. This statement appears to have been made in error, as the date of the director's adverse decision is March 27, 2007. There is no indication on record that the application was denied prior to March 27, 2007.

² The reference to misdemeanor charges appears to be a typographical error.

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).

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

1. An affidavit dated March 25, 1996 from [REDACTED] claiming that the applicant lived in Inglewood, California from July 1982 through the date of the affidavit. The affiant claimed that she and the applicant were neighbors, but did not provide any of the applicant's prior residential addresses.
2. An affidavit dated March 25, 1996 from [REDACTED] claiming that the applicant lived in Inglewood, California from July 1982 through the date of the affidavit. The affiant claimed that she and the applicant were neighbors, but did not provide any of the applicant's prior residential addresses.
3. A customer receipt from the U.S. Postal Service for a money order dated October 13, 1982. The applicant is identified as the payor whose address is [REDACTED].
4. A receipt for registered mail date stamped July 20, 1984. The applicant's name appears in the "From" portion of the receipt.
5. A customer receipt from the U.S. Postal Service for a money order dated March 17, 1986. The applicant is identified as the payor whose address is [REDACTED].
6. A Montgomery Ward receipt showing a delivery date of June 21, 1987. Although the receipt shows one of the addresses listed in the applicant's Form I-687, the customer of the purchase is not identified in the receipt.
7. A record request dated February 16, 1988 from Harbor Occupational Center showing the applicant as someone enrolled in the program. Although the request indicates that it was forwarded to the appropriate department for processing, the actual records are not in the applicant's legalization file.
8. An affidavit dated May 30, 2003 from [REDACTED] claiming that he has been a family friend of the applicant and has known her since 1981. He stated that the applicant resided in Inglewood, CA from 1981 to 1993. The affiant did not provide any specific addresses for the applicant for the relevant time period.
9. An affidavit dated May 30, 2003 from [REDACTED] claiming that she met the applicant at a family party and has known her since 1981. She stated that the applicant resided in Inglewood, CA from 1981 to 1993. The affiant did not provide any specific addresses for the applicant for the relevant time period.

In the denial, the director noted that on March 30, 1996 during an interview with a CIS officer, the applicant provided a sworn statement in which she claimed to have first entered the United States in 1989. The director further noted that the applicant provided copies of certain documents, in lieu of originals, and observed that the applicant did not provide any verifiable documentation of her residence in the United States prior to 1990.

On appeal, the applicant disputes the director's findings, explaining that she responded with 1989 when asked about her latest entry into the United States. However, the applicant did not explain why she stated, under oath, in a statement that was written in her native Spanish language, that her first entry into the United States was in 1989. The AAO further notes that in the applicant's Form I-687 application, the applicant claimed that she only left the United States on one occasion during her purported residence and indicated that her absence occurred in 1987. No mention was made of any departure and entry into the United States in 1989. Further, in the Form I-687 attachment titled, "Form For Determination of Class Membership in CSS vs Meese," the applicant was specifically asked to provide the date of her last departure from the United States after May 1, 1987. The applicant reiterated information provided in No. 35 of the Form I-687, claiming that her last departure was on June 5, 1987. Thus, the applicant's most recent explanation is entirely inconsistent with information provided by the applicant at an earlier time. That being said, it appears that in No. 16 of her Form I-687, she claimed to have entered the United States on October 15, 1981.³ This information is inconsistent with Nos. 6 and 7 of the "Form For Determination of Class Membership in CSS vs Meese," where the applicant stated that she first entered the United States on November 20, 1981. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The applicant further claims that she has provided evidence of her residence in the United States since 1981 and refers to post office receipts, which she claims are originals. However, with regard to the applicant's U.S. residence, the only documents that refer to the time period prior to January 1, 1982 are the two affidavits in Nos. 8 and 9 above where neither affiant provides any verifiable information. While both individuals claim to have known the applicant since 1981, neither provides a specific address for the applicant during the time period in question or submits any information about the frequency and nature of their respective encounters with the applicant. As such, neither affiant's statements can serve as an adequate basis for the conclusion that the applicant was residing in the United States during the time periods cited in the affidavits. The remaining affiants, specifically those in Nos. 1 and 2, indicate that they have known the applicant since July of 1982, as they were purportedly the applicant's neighbors. Neither affiant purports to have known of the applicant's U.S. residence prior to July of 1982 or, more importantly, prior to January 1, 1982. Moreover, even though each affiant claimed to have been the applicant's neighbor, neither provided the exact residential address where the applicant resided during the purported acquaintance.

With regard to the applicant's claim that she submitted original post office documents, the evidence in the applicant's record shows that the documentation submitted was photocopied and that the original receipts, if any, remained with the applicant. There is no explanation from the applicant as to why the original post office receipts were not submitted for review. The AAO also notes that the receipt copies show that the applicant's name and address as well as that of the recipient were filled out by hand, thereby making it even more crucial to review the originals rather than the photocopies that were submitted. Moreover, even if the AAO were to give full evidentiary weight to the documents discussed in Nos. 3-5, above, none of the documents establishes the

³ It is noted that No. 16 in Form I-687 asks the applicant about the date of her latest entry into the United States. It appears, however, that the applicant provided information about her first claimed entry into the United States.

applicant's claimed U.S. residence prior to January 1, 1982, as statutorily required. Section 1104(c)(2)(B) of the LIFE Act. As previously discussed, the affidavits used to account for the time period prior to January 1, 1982 lack any verifiable information and thus cannot be relied upon for their lack of probative value.

Lastly, while the applicant submitted a number of contemporaneous documents, which do not establish the applicant's residence during the relevant time period, such documents suggest a lack of credibility in the applicant's overall claim as a result of various inconsistencies. First, the applicant submitted the following contemporaneous documents showing her address to be [REDACTED] on the date of each of the respective documents: 1) a gas and electric bill dated August 2, 1990; 2) a gas and electric payment receipt dated November 16, 1990; 3) a receipt for rent paid on August 15, 1990 for the one-month period from August 19 to September 19, 1990; 4) a photocopy of a check written out by the applicant on November 26, 1990; and 5) 1992 W-2 statements issued by three different employers. Additionally, according to the applicant's phone bill dated December 19, 1989, she resided at [REDACTED] during the date on the bill. According to No. 33 of the Form I-687, the applicant did not reside at [REDACTED] after 1987 and never resided in apartment No. 4 even when she claims to have resided at [REDACTED]. Additionally, the applicant's account of her purported residences in the United States did not include [REDACTED] as found in the applicant's 1989 phone bill. These numerous inconsistencies between contemporaneous documentation and the applicant's own claim give rise to serious doubt as to the applicant's credibility. The applicant has not provided clear and convincing subjective evidence to reconcile these considerable discrepancies. *See Matter of Ho*, 19 I&N Dec. at 591.

Accordingly, in light of the applicant's questionable credibility and the overall lack of evidence to account for significant portions of the time period from prior to January 1, 1982 through the date the applicant attempted to file her application, the applicant has 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.