

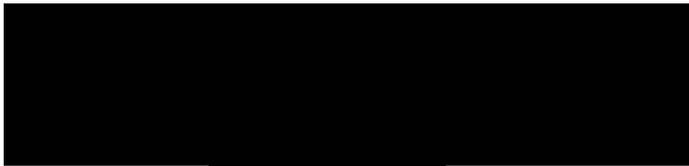


U.S. Citizenship  
and Immigration  
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FILE:



OFFICE:

LOS ANGELES

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**APR 01 2008**

[consolidated herein]

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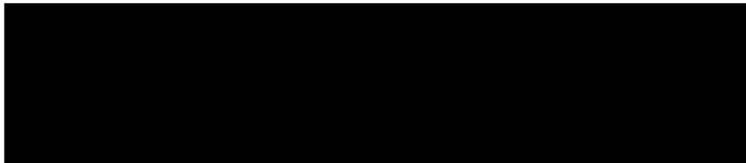
Applicant:



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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits [or Records] Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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, and maintained continuous physical presence in the United States during the period from November 6, 1986 through May 4, 1988.

On appeal, counsel submits a brief statement.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. See section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

“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.

Pursuant to 8 C.F.R. § 245a.16(b), an alien shall not be considered to have failed to maintain continuous physical presence in the United States by brief, casual, and innocent absences from the United States. Brief, casual, and innocent absences as used in this paragraph means “temporary occasional trips abroad as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.”

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 district 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

While there is no specific regulation that governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements that affidavits are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information that an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i), letters from employers attesting to an applicant's employment must provide: the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and, identify the location of such company records and state whether such records are accessible or, in the alternative, state the reason why such records are unavailable. The regulation further allows that if official company records are unavailable, an affidavit form letter stating that the alien's employment records are unavailable and explaining why such records are unavailable may be submitted in lieu of meeting the requirements at (E) and (F) above.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(v), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to.

Nevertheless, an affidavit not meeting all the foregoing requirements may still merit consideration as "any other relevant document" pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In an attempt to establish continuous unlawful residence since before January 1, 1982 and continuous physical presence in the United States from November 6, 1986 through May 4, 1988, as claimed, the applicant furnished the following documentation:

1. A photocopy of a notarized letter, dated June 10, 1993, from [REDACTED], of Tustin, California, stating that the applicant worked for her as a baby-sitter from December 1981 to April 1986.
2. A photocopy of a second letter, dated December 1, 1995, from [REDACTED] of Tustin, California, stating that the applicant took care of her (the affiant's) children during different periods of time from 1981 through 1986.
3. Photocopies of immunization cards issued to her children in 1988.
4. A photocopy of a birth certificate indicating that the applicant gave birth to a son, on October 22, 1984, in Orange, California.
5. A letter, dated October 23, 2002, from the Regional Center of Orange County (RCOC), stating that the applicant's son [REDACTED] had been a consumer of the RCOC since 1985, and that the applicant "has always been present at [her son's] RCOC meetings and has advocated for her son's needs."
6. A letter, dated October 28, 2002, from the pastor of Our Lady of the Pillar Parish, Santa Ana, California, stating that the applicant baptized her son in the parish on December 30, 1984.
7. Photocopies of an Internal Revenue Service Form (IRS) W-2, Wage and Tax Statement, indicating that [REDACTED], of Santa Ana, California, (using Social Security No. [REDACTED]) earned \$7,721.49 in wages, tips, and other compensation in 1988.
8. Photocopies of an IRS Form 1040A for 1988, for the applicant and her spouse, [REDACTED]. It is noted that a marriage certificate contained in the record reveals that the applicant and her spouse were married in Mexico on October 13, 1982.

On August 31, 2004, the district director issued a Notice of Intent to Deny (NOID) the application. The district director noted that despite the applicant's claim that she continually resided in the United States since prior to January 1, 1982, through May 4, 1988, the record contained affidavits for the years 1981, 1982 and 1983, that were vague and lacking corroborating evidence. In addition, the district director noted that during a personal interview and in a sworn statement, the applicant stated that she had been absent from the United States for more than 45 days from April 1987 through June 1987, and had failed to establish that her return

to the United States could not be accomplished within the time period allowed due to emergent reasons. The applicant was afforded 30 days to respond with additional evidence to support her eligibility. In response, counsel for the applicant resubmitted photocopies of documentation previously provided.

The district director denied the application on November 15, 2005, for the reasons stated in the NOID.

On appeal, counsel asserts that the applicant has met all of the mandatory requirements for Adjustment of Status under the LIFE Act in that she has proof of entering the United States before January 1, 1982, has lived continuously in the United States since that time, is not inadmissible to the United States, and has demonstrated basic citizenship skills. Counsel also notes that brief, casual and innocent absences from the United States do not break the physical presence requirement. Counsel does not submit any additional evidence in support of the appeal.

Although counsel contends that the documentary evidence submitted in support of the application is sufficient to warrant approval, the AAO finds that the submitted evidence is not relevant, probative, and credible.

Although it appears from the record that the applicant was present in the United States in 1984 (Nos. 4, 5 and 6, above) and in 1988 (Nos. 3, 7 and 8), the key issues here are whether sufficient evidence exists to find that the applicant continuously resided unlawfully in the United States from January 1, 1982 through May 4, 1988, and maintained continuous physical presence in the United States from November 6, 1986 to May 4, 1988.

The record contains only two employment letters, both from [REDACTED] (Nos. 1 and 2, above) in support of the applicant's presence in the United States prior to January 1, 1982. These letters fall far short of meeting the criteria under either 8 C.F.R. § 245a.2(d)(3)(i) or 8 C.F.R. § 245a.2(d)(3)(v). There is no definitive evidence, therefore, to prove the applicant's continuous unlawful residence from on or before January 1, 1982. Furthermore, the record reveals that the applicant was absent from the United States for more than 45 days during the required time period, and there is no evidence establishing that her absence was due to *emergent reasons*, or that her return to the United States could not be accomplished within the time period allowed.

As stated above, the inference to be drawn from the documentation provided shall depend on the extent of the documentation. The minimal evidence furnished cannot be considered extensive, and in such cases a negative inference regarding the claim may be made as stated in 8 C.F.R. § 245a.12(e).

Given the lack of documentation submitted and the reliance on affidavits which do not meet basic standards of probative value, it is concluded that the applicant has failed to establish, by a preponderance of evidence, that she continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988, and that she maintained continuous

physical presence in the United States during the period from November 6, 1986 through May 4, 1988. 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.