



U.S. Citizenship  
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FILE:

MSC 02 264 61727

Office: LOS ANGELES

Date:

APR 02 2008

IN RE:

Applicant:

PETITION: 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. 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 determined that the applicant had not established that she resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, and that she maintained continuous physical presence in the in the United States during the period from November 6, 1986 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, the applicant submits a letter.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988. The pertinent statutory provision reads as follows:

Section 1104(c)(2)(B)(i). In general – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act that were most recently in effect before the date of the enactment of this Act shall apply.

“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.

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 its amenability to verification. *See* 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.

On March 2, 2005, the applicant was interviewed in connection with her application to adjust status to permanent resident status under the LIFE Act. At the time of interview, the applicant stated that she had entered the United States in 1980 and had been absent from the United States from: (1) 1983 until 1984 to get married in Mexico; (2) from October 1984 until November 1984 to have her child in Mexico; and, (3) from October 1986 until 1988 to have another child in Mexico.

On October 6, 2005, the district director issued a Notice of Intent to Deny (NOID) the application because the applicant had failed to submit evidence of her continuous unlawful status in the United States from before January 1, 1982, through May 4, 1988. The director noted that the applicant had stated under oath at her interview that she had been absent from the United States for a period of 2 years – from October 1986 until 1988. The applicant was granted thirty days to respond to the notice.

In response to the NOID, the applicant submitted a letter stating that she had been intimidated and nervous at the time of her interview and had meant to state that she had left the United States on two different occasions from 1986 through 1988.

On January 26, 2006, the district director denied the application on the basis of the reasons stated in the NOID. The district director’s determination that the applicant had been absent from the United States from 1986 through 1988 was based on the applicant’s own testimony in a sworn, signed statement taken at the time of her interview on March 2, 2005, under oath and in the presence of an officer of Citizenship and Immigration Services (CIS).

On appeal, the applicant submits a letter indicating that her only excuse is that she was pregnant and gave birth to a baby girl with health problems. She further states that the doctor who treated her and her child is now dead.

While not dealt with in the district 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.”

At no point prior to the applicant's appeal did she put forth any reason any valid basis for her departure from this country in 1986, her prolonged absence until 1988, and any clear evidence of her intent to return to the United States within 45 days. On appeal, the applicant also has failed to provide any evidence of her child's health problems that would require the applicant to remain outside of the United States due to emergent reasons.

In the absence of additional evidence from the applicant, it is determined that her absence from the United States from October 1986 until 1989 exceeded the 45 day period allowable for a single absence, as well as the 180 day aggregate total for all absences. Accordingly, in the absence of evidence that the applicant intended to return within 45 days, it cannot be concluded that an emergent reason "which came suddenly into being" delayed or prevented the applicant's return to the United States beyond the 45-day period.

The applicant has, therefore, failed to establish that she has maintained continuous physical presence in the in the United States during the period from November 6, 1986 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act. Given this, she 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.