

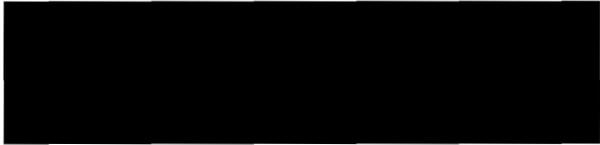


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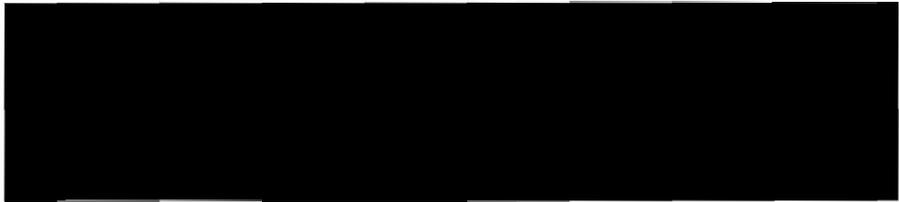
Office: LOS ANGELES

Date: APR 08 2008

consolidated herein]
MSC 02 248 62109

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 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 in Los Angeles, California. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the grounds that the applicant failed to establish that she entered the United States before January 1, 1982, resided continuously in the United States in an unlawful status from then until May 4, 1988, and was continuously physically present in the United States from November 6, 1986 through May 4, 1988.

On appeal, the counsel submits a statement and copies of previously submitted documentation.

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.”

“Continuous physical presence” is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: “An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences from the United States.” The regulation further explains that “[b]rief, casual, and innocent absence(s) 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.” 8 C.F.R. § 245a.16(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. 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.

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).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that 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 applicant, a native of Mexico, filed her application for permanent resident status under the LIFE Act (Form I-485) on June 5, 2002.

On December 7, 2005, the director issued a Notice of Intent to Deny (NOID), advising the applicant that the documentation of record failed to establish that she entered the United States before January 1, 1982, without which the affidavits she had submitted as evidence of her continuous residence in the United States from before January 1, 1982 through May 4, 1988 were insufficient. The director also indicated that the applicant had failed to provide documentation from a governmental or non-governmental authority of her continuous physical presence in the United States from November 6, 1986 through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

In response to the NOID the applicant submitted copies of a series of letters and affidavits from individuals who claim to have known, employed, or resided with the applicant in Los Angeles during the 1980s. Except for one new affidavit, the foregoing materials had already been submitted in the early 1990s during the course of the applicant’s claim for class membership in the CSS (Catholic Social Services) v. Meese class action lawsuit.¹

¹ *Catholic Social Services v. Meese*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993).

On January 5, 2006, the director denied the application on the ground that the documentation submitted by the applicant failed to overcome the grounds for denial as stated in the NOID.

On appeal the applicant reiterates her contention that the previously submitted materials establish her residence and physical presence in the United States for the time periods required for legalization under the LIFE Act. The applicant resubmits copies of the materials submitted in response to the NOID.

The issues in this proceeding are whether the applicant has furnished sufficient credible evidence to establish that her unlawful residence in the United States began before January 1, 1982 and continued uninterrupted through May 4, 1988, and that she was continuously physically present in the United States from November 6, 1986 through May 4, 1998. The AAO determines that she has not.

The applicant asserts that she first entered the United States without inspection in May 1981, and that she has resided in the United States continuously thereafter. The applicant indicates that she departed the United States four times during the 1980s on short-term trips of one month or less to Mexico, including: (1) to get married in July 1983, (2) to have her first baby on April 24, 1984, (3) to have her second baby on November 11, 1986, and (4) for a family emergency from October 4 to 25, 1987. As evidence of her residence in the United States during the 1980s the applicant has submitted the following documentation from residents of Los Angeles, California:

a sworn declaration by [REDACTED] dated July 16, 1993, that he cohabited with the applicant at [REDACTED] in Los Angeles, from May 10, 1981 to October 30, 1984;

- an affidavit from [REDACTED] dated May 17, 1993, stating that he had been friends with the applicant since 1981 and knew that she had been living in Los Angeles since September 1981;
- a letter from [REDACTED], dated July 24, 1989, stating that he had employed the applicant as a housekeeper at [REDACTED] in Lawndale, California, from June 1981 to January 1985;
- a letter dated February 8, 1991 from [REDACTED], general manager of [REDACTED] Jeweler in Los Angeles, stating that she sold wholesale jewelry to the applicant from January 1986 to November 1990, along with two receipts for jewelry repairs dated March 19, 1986 and January 10, 1988;

a letter dated August 24, 1990 from [REDACTED], a, owner of [REDACTED] Imports in Los Angeles, stating that the applicant had often bought jewelry in her store from February 1985 until April 1990, along with a credit application by the applicant dated June 1, 1985, with a hand-written note of approval dated June 4, 1985, and ownership certificates for two watches purchased by the applicant on August 10, 1985 and August 8, 1986.

Only the first three of the foregoing individuals claim to know that the applicant resided in the United States before January 1, 1982. None of them, however, provides much information about the applicant during the early and mid-1980s. While [REDACTED] states that he cohabited with the applicant from May 1981 to October 1984, his declaration was prepared on a fill-in-the-blank form that looks like it was drawn up by someone else with almost no personal input from [REDACTED] about his three and a half years of shared accommodations with the applicant. The affidavit from [REDACTED] – also a fill-in-the-blank form – is even more spartan, with a simple statement that he had known and been friends with the applicant since 1981 and that she had lived in Los Angeles since September 1981. [REDACTED] provided no address(es) for the applicant during the 1980s, and no information about the nature and extent of his interaction with her during those years. The letter from [REDACTED] who claims to have employed the applicant as a housekeeper from June 1981 to January 1985, does not specify how often the applicant worked for him during that time frame (weekly, monthly, or intermittently) and does not provide any address(es) for the applicant at that time. Furthermore, no primary documentation has been furnished by any of these three individuals, or by the applicant, to support their assertion that the applicant was residing in the United States as early as 1981. In fact, there is no documentation in the record at all dated earlier than 1985.

The applicant has acknowledged four absences from the United States during the 1980s. According to the applicant, they included trips back to Mexico to get married in 1983, to give birth to her first and second children in 1984 and 1986, and to visit an ailing family member in 1987. Except for the last trip – which the applicant states lasted three weeks, from October 4 to October 25, 1987 – the applicant has provided no dates for her departures from and returns to the United States. While she asserts that the first three trips, like the fourth, lasted a month or less, there is no documentary evidence to support those claims. If any of the applicant's absences from the United States exceeded 45 days, it would have interrupted her continuous residence in the United States, unless she could show that "emergent reasons" delayed her return to the United States.² Moreover, the birthdate of the applicant's second child (November 11, 1986) was during the time period when the applicant must have maintained continuous physical presence in the United States to be eligible for LIFE legalization. Unless the applicant could show that her trip to Mexico to give birth to her second child was a "brief, casual, and innocent absence from the United States," within the meaning of 8 C.F.R. § 245a.16(b), this trip may also be deemed to have interrupted the applicant's continuous physical presence in the United States.

Considering the lack of any documentation in the record dating earlier than 1985, the paucity of information provided by the acquaintances attesting to the applicant's residence in the United States back to 1981, as well as the lack of details from the applicant and supporting evidence regarding her absences from the United States in the years 1983, 1984, 1986, and 1987, particularly with regard to their duration, the AAO concurs with the director's decision that the

² Although the term "emergent reasons" is not defined in the regulation at 8 C.F.R. § 245a.15(c)(1), *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that *emergent* means "coming unexpectedly into being."

applicant has failed to establish her initial entry into the United States before January 1, 1982, her continuous residence in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and her continuous physical presence in the United States from November 6, 1986 through May 4, 1986, as required under section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and 3(A).

Thus, the applicant has failed to establish her eligibility for permanent resident status under the LIFE Act. The applicant's appeal will be dismissed, and the application denied.

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