

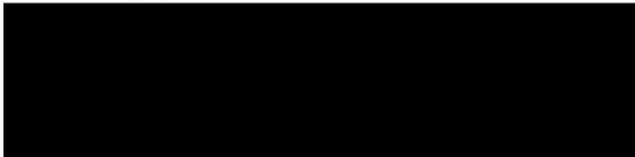
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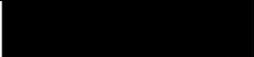
**U.S. Citizenship
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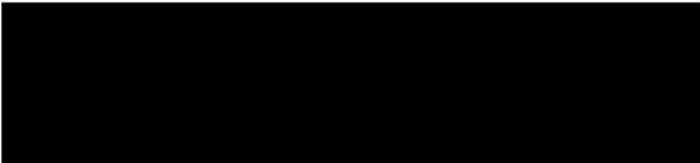
Applicant:



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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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.

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, Atlanta, 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 since before January 1, 1982 through May 4, 1988. Specifically, the director noted that because the applicant entered the United States under a valid B-2 visitor visa on August 27, 1982, she was lawfully present in the United States for a least a portion of the relevant period.

On appeal, counsel states that the applicant entered the United States on a "facially valid" visa but had the intention to violate said visa. Counsel contends that as a result of her dishonest intentions, she consequently was present in the United States in an unlawful status. The AAO agrees with counsel's contentions, but finds that the applicant is ineligible for failing to provide sufficient evidence of her continuous unlawful residence in the United States during the requisite period.

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).

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).

The applicant claimed on her affidavit for class membership, signed under penalty of perjury on January 10, 1991, that she first entered the United States through Montreal in September 1981. She further claims that she departed the United States briefly in 1982 and returned on August 27, 1982 on a B-2 visitor's visa. Therefore, the applicant concludes that she established residency in the United States prior to her lawful reentry in August 1982.

On her Form I-687, Application for Status as a Temporary Resident, also signed under penalty of perjury on January 11, 1991, the applicant claimed to reside at the following addresses during the requisite period:

1981 to 1985:
1986 to 1989:

[REDACTED]

On this same form, she also claimed to have been employed by [REDACTED] as a housekeeper from 1981 to 1989.

In an attempt to establish her continuous unlawful residence in the United States from before January 1, 1982 to May 4, 1988, the applicant submitted the following documents:

- (1) Affidavit dated May 10, 2002 by [REDACTED] husband of the applicant, outlining the history of their relationship. Mr. [REDACTED] indicates that he first met

the applicant in November 1981 at a house party in North Miami. He claims that she began babysitting for his first two children in 1985 until 1989 when the children left Florida with their mother. He then discussed their relationship and subsequent marriage after the end of the requisite period

- (2) Affidavit dated February 6, 2002 by [REDACTED] claiming that the applicant has been a close of friend of his since September 1981. He claims that he brought her into his home as a housekeeper for her first nine years in the United States.
- (3) Affidavit dated February 28, 2003 by [REDACTED] stepson of the applicant. Claiming that the applicant was his babysitter from 1985 to 1989. It is noted that the affiant was born on September 28, 1985, and that he remembers her from 1987 onward. The AAO notes that according to his date of birth, the affiant attests to remembering the applicant from age two to four.
- (4) Second affidavit by [REDACTED], dated March 12, 2003, which provides several pages of narrative outlining his relationship with the applicant. He again claims that he met her at a house party in North Miami in November 1981, and that he saw her three more times before the end of the year. In 1982, he claims he spoke to the applicant approximately twice a week, and that he saw her three times that year. Regarding the period from 1983 to 1985, the affiant claims that the applicant came to his house on one occasion to congratulate him on the birth of his child. No additional details regarding their relationship during this period are provided. For the period from 1986 to 1988, the affiant claims that the applicant became the babysitter for his children during this period.

Upon review of the record, it is noted that the director did not review the evidence pertaining to her continuous unlawful residence during the requisite period. Instead, he focused solely on her ineligibility based on her date of first entry in to the United States. Despite the director's limited review of the application, the AAO will review the record in its entirety to determine the applicant's eligibility.¹

The director noted that the applicant's legal entry to the United States on August 27, 1982 rendered her ineligible for the benefit sought, and issued a notice of intent to deny (NOID) the application on December 20, 2004. In the NOID, the director noted that her legal entry into the United States in August 1982 meant that for at least a portion of the period between January 1, 1982 through May 4, 1988, she was present in the country in a *lawful* status, thereby violating the regulatory provisions. The applicant

¹ The director's failure to review the evidence submitted in support of the applicant's continuous unlawful residence is harmless because the AAO conducts a *de novo* review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

was afforded the opportunity to rebut this conclusion and submit any additional evidence in support of the application.

In rebuttal, counsel for the applicant claims that the applicant's intent when she legally entered the country in August 1982 was to violate her status by overstaying and working illegally in the United States and, therefore, was illegal for purposes of this analysis. Counsel conclude that the illegal intentions of the applicant therefore rendered her presence unlawful, thus qualifying her for permanent residency under the LIFE Act.

The director disagreed, and denied the petition on February 4, 2005. The director again noted that her legal entry into the country under the B-2 visa rendered her in *lawful* status for at least a portion of the qualifying period, and further noted that despite counsel's contentions, there is no evidence that her alleged unlawful status was known to the government.

On appeal, counsel restates the position she presented in response to the NOID, and focuses on the applicant's intent to violate the lawful status granted to her under the B-2 visa in August 1982. Counsel claims that since she immediately resumed working illegally upon her lawful entry to the country in August 1982, she thus was present and residing in the United States in an unlawful status. Counsel concludes by contending that such unlawful presence satisfies the regulatory requirements and renders the applicant eligible to adjust status to permanent resident. The AAO disagrees with both the director and counsel.

Both the director and counsel raise valid points in analyzing the applicant's 1982 exit and re-entry. Generally, an absence of less than one month would be considered a brief and casual absence, and not disruptive of an applicant's continuous unlawful residency. Likewise, entry to the United States with a valid B-2 visitor visa would normally be deemed a legal entry, and would generally oppose a finding that an applicant continued to reside in an unlawful status.

In this matter, however, it appears that the applicant fraudulently procured an B-2 visitor visa in August 1982 to gain re-entry to the United States with the intent to immediately resume her unlawful residence.

Section 212(a)(6)(C) of the Act provides:

Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

In the applicant's affidavit dated March 2, 2005, the applicant admits that she did not intend to maintain residence in her home country of Liberia. She claims:

When I returned to the U.S. in August 1982, I entered with a visitor's visa, but I knew I was not coming to the country only for a visit. It was my intention to come and stay to live and work. I knew I did not have permission to work, but I resumed my employment when I returned to the U.S. in August 1982.

Based on the record of proceeding, while the applicant overstayed her B-2 visa and thus resumed unlawful status, it is evident that the applicant procured a B-2 visitor visa in a fraudulent manner and made material misrepresentations in an attempt to establish her residence within the United States for the requisite period. Such misrepresentations render her inadmissible to this country pursuant to section 212(a)(6)(C) of the Act. By filing the instant application and relying on fraudulently obtained documentation, the applicant has sought to procure a benefit provided under the Act through fraud and willful misrepresentation of a material fact. In this matter, however, the record contains Form I-690, Application for Waiver of Grounds of Excludability, based on the above provision.

Therefore, the AAO will withdraw the director's findings with regard to this issue, and focus on a related issue not addressed by counsel or the director.

Upon review of the documentation provided in support of the application, it appears that the applicant is unable to substantiate her claim of first entry to the United States. Regardless of her manner of entry, the record contains no evidence to corroborate the applicant's claims. The applicant claims that she first entered the United States on September 6, 1981 through Montreal. She claims that she overstayed and subsequently departed the United States on August 6, 1982. She claims to have remained out of the country until August 27, 1982, when she re-entered legally on a B-2 visa. When questioned regarding proof of exit and entry during her interview, the applicant admitted she had no documentation to support these claims.

The *Matter of E—M-* provides guidance in assessing evidence of residence, particularly affidavits. See 20 I&N Dec. 77. In that case, the applicant had established eligibility by submitting (1) the original copy of his Arrival Departure Record (Form I 94), dated August 27, 1981; (2) his passport; (3) affidavits from third party individuals; and (4) an affidavit explaining why additional original documentation is unavailable. In this case, there is no Form I-94 or admission stamp in a passport establishing the applicant entered the United States prior to January 1, 1982 as claimed. The applicant provides no evidence or third party affidavits to explain the absence of such documentation. Furthermore, in the event that her entry could be demonstrated in September 1981 as claimed, there is no definitive evidence to show that her trip outside the United States in 1982 was less than 45 days, and therefore not disruptive of her continuous residence. Merely claiming that evidence is unavailable is insufficient to establish eligibility in this proceeding. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). In this matter, the AAO finds that the applicant has failed to credibly document that she entered the United States prior to January 1, 1982. Accordingly, the applicant has not established that her alleged reentry into the United States pursuant to a valid B-2 visa was a return to an unrelinquished unlawful residence.

The second issue to be reviewed is whether the applicant continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988, as required by 8 C.F.R. § 245a.11(b).

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. at 79-80. 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 or 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.

Here, the applicant has failed to meet her burden of proof.

In addition to having insufficient documentation of her claimed entry prior to January 1, 1982, the applicant has minimal documentation pertaining to her continuous unlawful residence during the requisite period. Although she claims to have resided at the same address throughout the entire period, the applicant has submitted no evidence of her residence there, such as a lease agreement or utility bills. The only evidence pertaining to her residence at this address is a brief affidavit from James Goodridge, her employer and essentially her landlord at this location. No details, such as the circumstances surrounding this living arrangement or whether the applicant paid rent, were included in the affidavit. In addition, the applicant has submitted four affidavits from individuals claiming to have known the applicant in the United States.

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). The only evidence in support of her continuous unlawful residence is the collection of third party affidavits.

While there is no specific regulation which governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements which affidavits from organizations are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information which 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), 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. See 8 C.F.R. § 245a.2(d)(3)(v).

While these standards are not to be rigidly applied, an application which is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on affidavits which are considerably lacking in such basic and necessary information.

The affidavits submitted in support of this application fall far short of meeting the above criteria. One affidavit is from her stepson, who claims to recall the applicant as his babysitter when he was between the ages of 2 and 4. Such a claimed recollection is less than credible, for it lacks essential details as outlined above. Another affidavit, discussed above, is from her employer and landlord during this period. The affidavit of [REDACTED] provides only minimal information, and does not even identify the address at where they allegedly lived during this period. Mr. [REDACTED] indicates that the applicant was his housekeeper, yet he provides no information regarding her salary or how she was paid. Finally, the remaining two affidavits are from her husband, which provide a general overview of his early contact with the applicant. According to [REDACTED], he saw the applicant a few times a year from 1981 to 1985, and saw her more frequently beginning in 1986 when she began babysitting for his children.

All of these affidavits fail to provide specific information, such as the basis for their acquaintance with the applicant and the origin of the information to which they attest. While [REDACTED] eventually married the applicant in 1991, merely claiming that they met a few times a year in the early part of the requisite period is insufficient to establish the applicant's continuous unlawful residence. Moreover, the remaining two affidavits, without providing more information regarding the nature of their relationship and the frequency of their contact with the applicant, are insufficient to establish that the applicant continually resided in the United States in an unlawful manner during the requisite period.

Given the absence of contemporaneous documentation 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 he continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. Therefore, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

Accordingly, the AAO hereby withdraws the director's decision and enters its own decision denying the application based on the finding that the applicant has failed to substantiate the claim that she entered the United States prior to January 1, 1982 and resided therein in a continuous unlawful manner through the duration of the relevant period.

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