

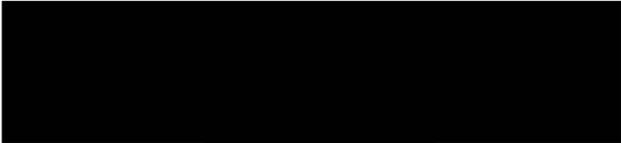
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L2

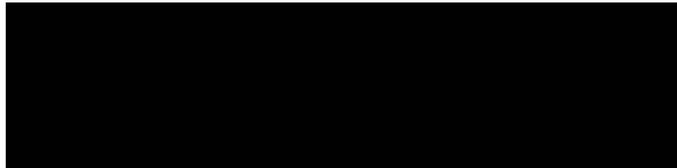


FILE: [REDACTED]
MSC 02 072 61724

Office: NEW YORK

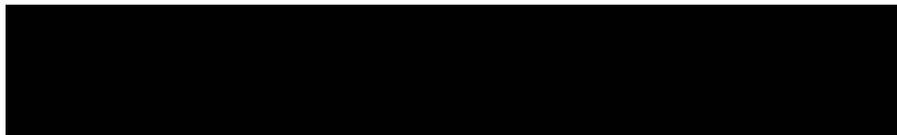
Date: DEC 17 2008

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 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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The 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, as required under section 1104(c)(2)(B) of the LIFE Act, because she had been absent for a period of more than 45 days.

On appeal, the applicant submits a brief statement and additional documentation.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish his or her 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. Although the term “emergent reason” is not defined in the regulations, *Matter of C-*, 19 I. & N. Dec. 808 (Comm. 1988) holds that *emergent* means “coming unexpectedly into being.”

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.

The applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status, under the LIFE Act on December 11, 2001. In connection with that application, the applicant indicated that she had been absent from the United States from November 20, 1989, to January 7, 1988, due to an emergency visit to Mexico – that the father of her children had been in an accident and almost died.

On April 14, 2007, the director issued a Notice of Intent to Deny (NOID) the application because the applicant had failed to establish her continuous unlawful status in the United States from before January 1, 1982, through May 4, 1988, due to her absence from the United States for more than 45 days during the requisite time period. The applicant was granted thirty days to respond to the notice.

The applicant responded, on May 11, 2007, with a letter stating that her “ex-espouse [sic]¹ and father of her children,” [REDACTED], had been in a very serious accident in Puebla, Mexico, and that, as a licensed physician (surgeon) in Mexico, her presence was urgently requested. She further stated that, once in Mexico, she had to stay to assist with his treatment. The applicant also submitted a letter from [REDACTED], stating that he had taken the applicant to Mexico on November 20th, and that she called him upon her return on January 7, 1988; and, a letter from [REDACTED], Chief of Radiology and Imaging at the Hospital Universitario De Puebla, stating that one of the applicant’s relatives required medical attention due to an automobile accident in November 1987, that the applicant presented herself to him on November 21, 1987, to thank him for the attention he lent to her relative during the days prior, and that the applicant remained in Puebla until January 6, 1988.

On July 28, 2007, the director denied the application. The applicant filed an appeal from the director’s decision on August 23, 2008. In support of the appeal, the applicant provided additional letters from [REDACTED], stating that medical files regarding the applicant’s relative had been disposed of due to hospital renovation, and documentation regarding the deaths of two of the

¹ It is also noted that the applicant had previously stated in a “LULAC Member Declaration,” signed by her on September 23, 1992, that she left the United States in 1987 because her “husband” was very sick.

physicians who had assisted the applicant's relative in the emergency department. The applicant also provided a letter from her "relative," [REDACTED], stating that the applicant came to Puebla at the request of his brothers to help him after his automobile accident, and that the applicant stayed by his side "through the lapse of November 10th 1987 through January 6th 1988."

While not directly dealt with in the district director's decision, there must be a determination as to whether the applicant's prolonged absence from the U.S. was due to "emergent reasons."

The record reveals that there are some inconsistencies in the applicant's submissions. Although the applicant claimed that [REDACTED] was her "husband" and "espouse [sic]" - as well as a "relative" and the "father of her children" - the applicant was never married to him. The applicant was listed as "single" when she obtained a passport in Mexico in November 1988, and documentation contained in the record indicates that she has only been married since 1988 to [REDACTED] (divorced in 1990), [REDACTED] (divorced in 1996), and [REDACTED] (with whom she was still married when filing her Form I-485 in 2001). It is also noted that [REDACTED] stated in his letter that the applicant was by his side in Mexico beginning on November 10, 1987, while the applicant, [REDACTED], and [REDACTED], indicated that the applicant did not arrive in Mexico until November 20, 1987.

Based on a review of the record, the applicant's decision to depart the United States on November 20, 1988, was at the request of the brothers of [REDACTED], the father of the applicant's children, after he ([REDACTED]) had been in an accident on or before November 10, 1988. The applicant's absence from the United States exceeded the 45-day period allowable for a single absence.

The AAO determines that the applicant has failed to establish that her return to the United States could not be accomplished with the 45-day time period allowed, or that an emergent reason "which came suddenly into being" while she was in Mexico delayed or prevented her return to the United States within the 45-day period. 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.