

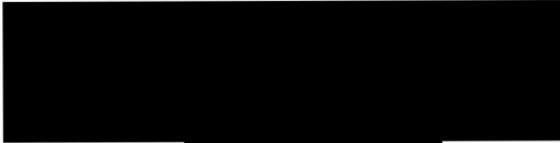


U.S. Citizenship
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Services

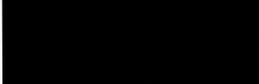
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FILE:



Office: HOUSTON

Date: **JAN 28 2008**

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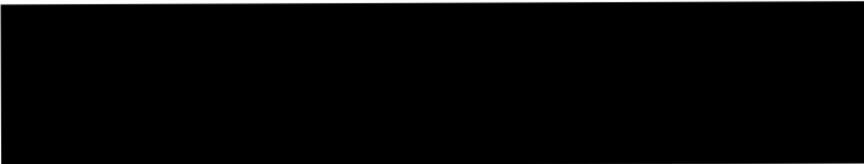
Applicant:



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, Houston, 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 (1) continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988; or (2) maintained continuous physical presence in the in the United States during the period from November 6, 1986 through May 4, 1988.

On appeal, counsel states that the applicant has submitted substantial documentary evidence to support a finding that she entered the United States prior to January 1, 1982 and resided there continually in an unlawful status through May 4, 1988, with the exception of one brief trip to Mexico in 1987. Counsel resubmits affidavits and other documentation in support of this claim, and requests reevaluation and reconsideration of the evidence in the record.

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).

On her affidavit for class membership, which she signed under penalty of perjury on January 17, 1991, the applicant claims that she entered the United States in November 1980 without inspection. She claims that she departed the United States in June 1987 to return to Mexico to give birth to her baby, who was born on June 25, 1987. She claims that she returned to the United States in July 1987.

On Form I-687, Application for Status as a Temporary Resident, which she also signed under penalty of perjury on October 25, 1990, the applicant claims that she was employed by [REDACTED] as a housekeeper from 1983 to 1985 and again from 1988 to 1989. Regarding her residences, the applicant claims that she lived at the following addresses in Houston:

1980 to 1983:
1983 to 1984:
1984 to 1987:
1988 to Present:

[REDACTED]

Finally, on Form I-687, the applicant indicated that she departed the United States in June 1987 and returned in August 1987, contradicting her claim on the affidavit for class membership where she stated she returned to the United States in July 1987.

In an attempt to establish continuous unlawful residence since November 1980 and continuous physical presence in the United States from November 6, 1986 through May 4, 1988, as claimed, the applicant furnished the following evidence:

- (1) Affidavit dated "19th day of 2002"¹ by [REDACTED] who claimed that he has known the applicant since November 1981. He claims that he met her when she was renting an apartment at [REDACTED] where he was the manager.
- (2) Second Affidavit of Witness dated "19th day of 2002" by [REDACTED] who claimed that to the best of his knowledge, the applicant has resided in the United States in Houston, Texas since 1980.
- (3) Affidavit dated "19th day of 2002" by [REDACTED], who claimed that she has known the applicant since 1984. She claims that she has known her since she first moved to [REDACTED]
- (4) Affidavit dated "19th day of 2002" by [REDACTED] who claimed that to the best of her knowledge, the applicant has resided in the United States at [REDACTED], since January 1988.
- (5) Affidavit dated "19th day of 2002" by [REDACTED], who claimed that she has known the applicant since November 1980 when she met her at Thanksgiving.
- (6) Affidavit dated "14th day of 2002" by [REDACTED], claiming that she has known the applicant since May of 1985, and that the applicant would catch a ride with her to go grocery shopping.
- (7) Affidavit dated "14th day of 2002" by [REDACTED] who claimed that he has known the applicant since July 1986. He claims that the applicant would keep his wife company and watch over his house and pets while he was away.
- (8) Affidavit dated "14th day of 2002" by [REDACTED], who claims that she has known the applicant since May 1987. She claims that she met the applicant when she approached her to offer tamales she had cooked for sale.
- (9) Affidavit dated "14th day of 2002" by [REDACTED], who claimed that he has known the applicant since February 1982. He claims that he and his family worshipped with the applicant at the same church.
- (10) Affidavit dated "14th day of 2002" by [REDACTED] who claimed that she has known the applicant since February 1982. She claims that she and her family worshipped with the applicant at the same church.
- (11) Affidavit dated October 23, 1990 by [REDACTED], claiming that he has known the applicant since November 1981. He claims that he is able to determine the date of acquaintance with the applicant because he was the manager of the apartment building in which she rented an apartment.

¹ It is noted that several affidavits submitted do not include a full date. Instead of including the month, the affidavits merely state "19th day of 2002," "14th day of 2002," etc.

- (12) Second Affidavit dated October 23, 1990 by [REDACTED], claiming that he has known the applicant since November 1981. He claims that he is able to determine the date of acquaintance with the applicant because he was the manager of the apartment building in which she resided.
- (13) Affidavit of Witness dated October 23, 1990 by [REDACTED], who claimed that to the best of his knowledge, the applicant has resided in the United States in Houston, Texas since November 1981. This contradicts his Affidavit of Witness dated "19th day of 2002," where he claims that she resided in Houston since 1980.
- (14) Affidavit dated December 22, 1990 by [REDACTED], claiming that he has known the applicant since 1981. He claims that he is able to determine the date of acquaintance with the applicant because he met her at a party and they were living together.
- (15) Affidavit dated October 10, 1990 by [REDACTED], claiming that he has known the applicant since June 1983. He claims that he is able to determine the date of acquaintance with the applicant because he met her while she was selling tamales in the gate of his place of work.
- (16) Second Affidavit dated October 10, 1990 by [REDACTED] claiming that the applicant has worked for his as a housekeeper from 1983 to 1985, and from November 1989 to the present. This contradicts the applicant's claim on Form I-687 where she claims that she worked for him from 1988 to 1989.
- (17) Affidavit dated October 18, 1990 by [REDACTED] claiming that the applicant worked as his housekeeper from 1989 to present for 10 hours per week.
- (18) Affidavit dated October 18, 1990 by [REDACTED] claiming that he has known the applicant since November 1980. He claims that he is able to determine the date of acquaintance with the applicant because he met her at a Christmas party at a friend's house.
- (19) Affidavit of Witness dated October 15, 1990 by [REDACTED] claiming that to the best of his knowledge, the applicant has resided in the United States at [REDACTED] from January 1988 to present.
- (20) Affidavit dated November 12, 1990 by [REDACTED], claiming that the applicant worked for her as a babysitter from 1982 to 1984.
- (21) City of Houston sewer bills in the name of [REDACTED] dated March 9, 1983 and April 11, 1983.
- (22) Receipt for United States Postal Service money order payable to [REDACTED] dated August 12, 1981, for \$250.00.
- (23) Copies of two envelopes addressed to the applicant from [REDACTED] and [REDACTED]. [REDACTED] Postmarks are illegible on these envelopes.

- (24) United States Postal Service receipt dated February 26, 1985. No identifying information is included.
- (25) Rent receipt from [REDACTED] dated December 29, 1985, for rental of [REDACTED]
- (26) Affidavit dated October 24, 1990 by [REDACTED] claiming he has known the applicant since May 1981. He claims that he met the applicant at a Mother's Day Party.

On July 19, 2004, CIS issued a Notice of Intent to Deny the application. The district director noted that despite the applicant's claim that she continually resided in the United States since November 1980 with the exception of one trip to Mexico, the record did not contain credible evidence to support a finding that the applicant was continually present from 1982 through 1988. Specifically, the director noted that in her November 19, 2003 interview, the applicant indicated that she left the United States in June 1987 for 20 days to have her baby. The director found that this contradicted her claim on Form I-687, where she claimed she was absent from the United States from June 1987 to August 1987. The district director further noted that on her Form I-215B, Record of Sworn Statement in Affidavit Form, which was executed on October 26, 1990, the applicant claimed that she last entered the United States in January 1988. The director afforded the applicant the opportunity to clarify these inconsistencies, and also noted that there was insufficient evidence to establish her entry into the United States prior to January 1, 1982.

In a response dated July 29, 2004, counsel for the applicant claims that with regard to the statements made on Form I-215B, the form was prepared by an officer. Counsel further claims that there is no indication that the form was read to her in her native language, nor did she initial the form. The AAO notes, however, that the record reflects that the form was read to her in Spanish without an interpreter.

The applicant, through counsel, submitted the following supplemental evidence with the response:

- (1) Immunization records showing immunizations given to [REDACTED] son of the applicant, beginning September 8, 1987 and reoccurring on November 24, 1987 and February 10, 1988;
- (2) Three envelopes addressed to the applicant as [REDACTED] postmarked November 22, 1984, April 9, 1987 and July 15, 1987;
- (3) Two envelopes addressed to the applicant at [REDACTED] postmarked 1981 and 1982 (day and month illegible);
- (4) Two envelopes addressed to the applicant at [REDACTED] postmarked March 12, 1981 and November 16, 1980.

Additional affidavits and a letter from a member of the clergy were submitted in support of the application; however, they did not pertain to the relevant period and thus are not afforded weight in these proceedings.

A First Addendum to the response was submitted on July 30, 2004, which included an affidavit from the applicant dated July 23, 2004. In the affidavit, the applicant claims that the only time she left the United States was in June 1987. She claims she was absent for only 20 days and that she returned in July 1987.

The applicant failed to address the inconsistent statement she made under penalty of perjury on Form I-687, where she claimed that she returned to the country in August 1987. She also omitted any reference to the statements made on Form I-215B.

The director denied the application on December 29, 2004. The director noted that despite counsel's response and the additional evidence submitted, the applicant had not overcome the basis for the director's objections. On appeal, counsel for the applicant resubmits the previously-submitted documentation, and argues that the evidence in the record is sufficient to establish the applicant's eligibility by a preponderance of the evidence. Finally, counsel challenges the validity of the applicant's statements on Form I-215B.

The first issue on appeal is whether the applicant has demonstrated that she 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. 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 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 submitted evidence is not relevant, probative, and credible.

The director's first objection was based on the applicant's failure to substantiate her claim that she entered the United States prior to January 1, 1982. Although the applicant claims that she entered the United States in November 1980, the only corroborating evidence is composed of affidavits by [REDACTED] who claims he managed the apartment complex at [REDACTED]. In his affidavits, he claims he met the applicant in November 1981 when she rented an apartment, but later claims that he has known her since 1980. The affiant does not state the basis for these conflicting statements, nor does he address how he met her in 1981 but can attest to her residency as of 1980. While on their face, the affidavits support the applicant's claim that she entered the United States prior to January 1, 1982, the unresolved inconsistencies and lack of additional information renders these affidavits insufficient to establish the applicant's eligibility.

Additionally, the applicant relies on the following affiants to establish her entry prior to January 1, 1982: (1) [REDACTED] who claimed that she has known the applicant since November 1980 when she met her at Thanksgiving; (2) [REDACTED] claiming that he has known the applicant since 1981

because he met her at a party and they were living together; and (3) claiming that he has known the applicant since November 1980 when he met her at a Christmas party at a friend's house.

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).

All of the affidavits above provide only brief statements regarding the basis of their acquaintance with the applicant. They omit the applicant's addresses during the relevant period and do not discuss the origin of the information to which they attest. While most attest to the applicant's continuous residence in the United States, they omit exact dates and fail to provide the manner in which they can attest to such statements. For example, while [REDACTED] claims he met the applicant at a Christmas party in 1980, he provides no additional information regarding the nature of their acquaintance or their frequency of contact during the relevant period.

Based on the above deficiencies, it cannot be determined by a preponderance of the evidence that the applicant entered the United States prior to January 1, 1982.

The district director also determined that the applicant had not demonstrated that she maintained continuous physical presence in the United States from November 6, 1986 through May 4, 1988. Specifically, the director noted the discrepancy regarding the applicant's trip home to Mexico in relation to the birth of her son, and noted that despite being afforded the opportunity to address these inconsistencies, the applicant failed to adequately do so.

As stated in 8 C.F.R. § 245.15(b)(1), a list of evidence that may establish an alien's continuous residence in the United States can be found at § 245a.2(d)(3).

Although the applicant claims she departed the United States in June 1987 for 20 days, she likewise claims that she reentered without inspection. As a result, there is no documentary evidence in the form of an arrival-departure record or stamped passport to verify the exact date of her return. As discussed above, the applicant provides conflicting statements under oath. On Form I-687, she claims she departed the United States for Mexico in June 1987 but did not return until August 1987. On her affidavit for class membership, she claims that she departed in June 1987 and returned 20 days later, in July 1987. On Form I-215B, she claims she did not return until January 1988.

These inconsistencies were not reconciled by the applicant prior to adjudication, despite the fact that she was afforded an opportunity to clarify these statements. Counsel focused on alleging that the statements

given on Form I-215B may have been obtained incorrectly and without the services of an interpreter, despite the fact that the record reflects that the statements were read and taken from her in her native language. The most important issue is her failure to address her two conflicting statements on Form I-687 and the affidavit for class membership. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

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 above negative factors would not necessarily be fatal to the applicant's claim, if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony provided. For the reasons previously discussed, this is not the case in this matter.

The applicant has not submitted any credible contemporaneous documentation to establish continuous unlawful status and physical presence in the United States from the time she claimed to have commenced residing in the U.S. through May 4, 1988. In light of the fact that the applicant claims to have continuously resided in the United States, this inability to produce contemporaneous documentation of residence raises serious questions regarding the credibility of the claim.

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.

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