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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship and Immigration Services

**PUBLIC COPY**

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FILE:

MSC 02 204 64310

Office: HOUSTON

Date: MAR 12 2008

IN RE: 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. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter 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 (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to establish that she entered the United States before January 1, 1982, and that she resided continuously in the United States in an unlawful status since that date through May 4, 1988.

On appeal, counsel submits an affidavit by the applicant in an attempt to resolve discrepancies in the record.

Section 1104(c)(2)(B) of the LIFE Act states:

(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 (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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).

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.* at 80. 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, 431 (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).

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet her burden of establishing entry into the United States before January 1, 1982, and continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record contains the following evidence in support of the applicant's claim of entry before January 1, 1982, and continuous unlawful residence since such date through May 4, 1988.

1. A photocopy of a Barclays Bank of California bank receipt dated January 15, 1985. The receipt does not contain the applicant's name.
2. Photocopies of purchaser's copies of form money orders in the applicant's name, dated in 1981, 1982, 1983 and 1986.
3. A photocopy of a three [REDACTED]'s Boutique receipts in the applicant's name, dated in 1983 and 1984.
4. A March 10, 1990, letter by [REDACTED] who stated that the applicant resided and worked as a housekeeper from December 1981 through September 1987. [REDACTED] stated that the applicant received transportation, food and a salary of \$100.00 per month. She provided her telephone number and address of residence.

In the Notice of Intent to Deny (NOID), dated September 5, 2003, the director stated that there were inconsistencies between the applicant's verbal statements at her interview on July 22, 2003, and the documents in the record. During her interview, the applicant stated that she attended 12 years of education in Mexico. She also stated that she went to Venezuela after high school to attend one year of college in Venezuela. She further stated that her only absence from the United States was a trip to Mexico from February 18, 1985, to March 25, 1985.

The director determined that, based on her description of her education in Mexico, the applicant could not have entered the United States prior to 1984. The applicant failed to establish her claim of entry into the United States before January 1, 1982. The director granted the applicant thirty (30) days to submit a rebuttal or additional evidence. The record reflects that the applicant failed to respond. In the Notice of Decision, dated February 17, 2004, the director denied the instant application and determined that the applicant was ineligible for adjustment of status under LIFE Legalization.

On appeal, counsel submits an affidavit by the applicant, dated September 13, 2004. The applicant asserted that the NOID contains a "... couple of misstatements of fact;" she attended six years of elementary school (1971 to 1977), three years of middle school (1977 or 1978 to 1980), and one

month of high school. She asserted that she dropped out of the high school, named Republica de Venezuela, at the end of 1980 or the beginning of 1981. She stated that she never studied or lived in Venezuela.

To meet her burden of proof, an applicant must provide evidence of eligibility apart from her own testimony. 8 C.F.R. § 245a.2(d)(6). While it is possible that there was miscommunication at the applicant's interview, it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The record contains no independent objective evidence to explain the above inconsistency.

There is another discrepancy in the record. The applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status pursuant to Section 245A of the Immigration and Nationality Act on March 19, 1990. In her Form I-687, the applicant listed two absences to Mexico. She stated that she went to deliver her baby in Mexico from February 18, 1985, to February 22, 1985. She also stated that she visited her sick mother in Mexico from August 5, 1987, to August 31, 1987. In connection with the instant application, in her own sworn statement, the applicant only indicated one absence from the United States in 1985. The record contains no independent objective evidence to explain this discrepancy. This inconsistency casts doubt on the credibility of the applicant.

While the record contains evidence that tends to demonstrate the applicant was in the United States for at least one day in 1981, 1982, 1983, 1984, and 1986, the evidence is insufficient to establish the applicant's continuous unlawful residence throughout the entire requisite period. The record contains only one letter, by [REDACTED], which corroborates the applicant's claim. Although not required, [REDACTED] failed to include any supporting documentation of her identity or presence in the United States. She also failed to indicate the address where the applicant resided and worked during the period in question. [REDACTED]'s letter provides minimal probative value.

The record also contains serious unresolved discrepancies. As the record contains no independent, objective evidence to explain the above inconsistencies, the truth cannot be determined. The absence of independent, objective evidence to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of her claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon documents with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988, as required under 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.