

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



L2

FILE:



Office: LOS ANGELES

Date:

**MAR 27 2008**

MSC 02 248 64791

IN RE:

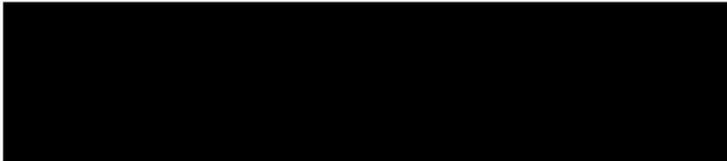
Applicant:



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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits [or Records] 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, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) 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 from before January 1, 1982, through May 4, 1988.

On appeal, counsel asserts that the applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel provides a brief along with additional evidence in support of the appeal.

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 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.* 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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period. Here, the applicant has failed to meet this burden.

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided the following evidence:

- An affidavit notarized November 10, 1989, from [REDACTED] of Reseda, California, who indicated she had met the applicant in September 1981 at a friend's home and attested to the applicant's residence in Tarzana since September 1981.
- An affidavit notarized November 9, 1989, from [REDACTED] of Tarzana, California, who indicated he met the applicant in a cafeteria and attested to the applicant's residence in Tarzana since September 1981.
- An affidavit notarized September 28, 1989, from [REDACTED] of Woodman Hills, California, who indicated that the applicant resides in his home and has been employed as a housekeeper since November 1981. The affiant indicated that the applicant received a salary commensurate with her duties and responsibilities. The affiant attested to the applicant's absences in April 1982 and August 1987.
- An affidavit notarized November 16, 1989, from [REDACTED] of Tel Aviv, Israel, who indicated that she met the applicant at her son's ([REDACTED]) home in November 1981, and attested to the applicant's residence at Woodland Hills, since November 1981.

At the time of her interview, the applicant informed the interviewing officer that she entered the United States in 1981, and resided in Tarzana, California on the weekends for two years. The applicant indicated that during the week she resided at her employer's, [REDACTED], home where she was employed as a housekeeper and a babysitter for eight years. The applicant indicated that her employer had moved to Israel.

The director, in issuing her Notice of Intent to Deny dated January 4, 2006, informed the applicant that she had failed to provide documentation to establish she had entered prior to January 1, 1982, and her physical presence from November 6, 1986, through May 4, 1988. The applicant, in response, submitted copies of documents previously provided along with:

- A declaration from [REDACTED], who indicated she first met the applicant at a supermarket in Tarzana, California in 1982. The affiant attested to the applicant's employment as a live-in housekeeper for another family, and indicated the applicant would stay at her home on the weekends when she did not work from 1986 to 1989.
- An additional affidavit from Jose Murillo, who indicated that he first met the applicant at a donut shop in Tarzana, California in December 1981 and has been friends with the applicant since that time. The affiant asserted that he and the applicant would go to the Santa Anita Race Park, Pico Rivers Sports Arena, Reseda Park and to different family functions and dance halls.
- Several photographs the applicant claimed were taken during the requisite period.  
A letter dated January 29, 2006, from Reverend [REDACTED] of Panorama City, California, who indicated that he first met the applicant in 1982 "at the Church in Los Angeles in North Hills, California" and that the applicant has been a member of the congregation since that date to 1995.

Counsel, in his brief, asserted that the applicant entered the United States without inspection on or about November 1981, and her intentions were to remain in the United States for only two years and return to El Salvador. Counsel asserted the applicant did not apply for an identification or a social security number until September 1988, and was not issued rent receipts, pay stubs or any other documents while employed as a live-in housekeeper by [REDACTED]. Counsel also asserted, in pertinent part:

Specifically, [the applicant] has disclosed to undersigned counsel that she was detained by the border patrol upon her initial entry into the United States in March 1981 on or about Toyac, Texas and then detained in El Paso, Texas. [The applicant] recalls being fingerprinted by an officer and remembers being granted voluntary departure to her native country of El Salvador.

Counsel asserted that the applicant believes she has some of the documents that were given to her upon her deportation from the United States in March 1981, and has requested that her family in El Salvador locate the documents. Counsel asserted that if the documents are found they will supplement his brief. Counsel asserted that a biometrics check would prove beyond a reasonable doubt that the applicant was physically present in the United States prior to January 1, 1982.

To date, however, no documents relating to the applicant's alleged removal in March 1981 have been presented.

The director, in denying the application, noted that Citizenship and Immigration Services (CIS) records reflect that the applicant had departed El Salvador on March 17, 1982, and traveled by bus through Guatemala and Mexico. The applicant entered the United States on April 17, 1982, and was arrested on April 19, 1982. The director determined that this information was not consistent with counsel's rebuttal and failed to establish that the applicant had arrived prior to January 1, 1982.

The record contains a Form I-213, Record of Deportable Alien, which indicates that the applicant illegally entered the United States on April 17, 1982, and was apprehended near Del Rio, Texas on April 19, 1982, for illegal entry and was subsequently fingerprinted by the United States Border Patrol. At the time of her apprehension, the applicant indicated that she departed El Salvador on March 17, 1982, and entered Guatemala on the same day, she then entered Talisman, Chiapas, Mexico on March 18, 1982, and arrived in Ciudad Acuna, Coahuila, Mexico on April 16, 1982. The applicant claimed to have no prior immigration record.

On appeal, counsel submits copies of documents that were previously submitted in response to the Notice of Intent to Deny along with:

- An affidavit from [REDACTED] of Sherman Oaks, who indicated she has been a friend of the applicant since 1985
- An affidavit from [REDACTED] of North Hollywood, California, who indicated that the applicant has been a customer of his restaurant, [REDACTED], since 1982.

Counsel also submits affidavits from [REDACTED] and [REDACTED]. These affidavits have no probative value or evidentiary weight as the affiants met the applicant (1990 and 1992, respectively) subsequent to the period in question.

CIS has determined that affidavits from third party individuals may be considered as evidence of continuous residence. *See Matter of E-- M--*, *supra*. In ascertaining the evidentiary weight of such

affidavits, CIS must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E-- M--*, *supra*, the affidavits 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. The statements issued by counsel and the applicant have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant resided in the United States *prior to* January 1, 1982.

1. The applicant indicated on her Form I-687 application residence at [REDACTED] in Tarzana, California from September 1981 to March 1989; however, the applicant claimed on her Form for Determination of Class Membership that she first entered the United States in November 1981. The applicant has not provided any credible evidence to establish residence at this address in 1981.
2. [REDACTED] attested to have first met the applicant in September 1981; however, the applicant did not claim to have entered the United States until November 1981.
3. The photographs submitted have no identifying evidence that could be extracted which would serve to either prove or imply that photograph was taken in the United States and during the requisite period.
4. [REDACTED], in his initial affidavit, indicated to have met the applicant in September 1981; however in his second affidavit, the affiant amended his statement to indicate he met the applicant in December 1981. As conflicting statements have been provided, it is reasonable to expect an explanation from the affiant in order to resolve the contradictions. However, no statement from the affiant has been submitted to resolve his contradicting affidavits.
5. [REDACTED]'s affidavit raises questions to its authenticity as he only attests to the applicant's absences in April 1982 and August 1987. However, the applicant: a) at the time of her apprehension on April 19, 1982, indicated she was in El Salvador in March 1982; b) on her Form G-325A, Biographic Information, the applicant indicated she was married in El Salvador in November 1982; and 3) at the time she filed her Form I-485 application, the applicant only claimed an absence from August 22, 1982, through September 22, 1982.
6. The remaining affidavits have no probative value as the affiants all attest to have met the applicant subsequent to 1981.

It must be noted that the letter from Reverend [REDACTED] also raises questions to its authenticity as the applicant indicated on her Form I-687 application that she was *not* affiliated with any religious organization during the requisite period. In addition, the letter has little evidentiary weight or probative value as it does not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, the pastor does not explain the origin of the information to which he attests.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

Given the credibility issues arising from the documentation provided by the applicant, it is determined that the applicant has not met her burden of proof. The applicant has not established, by a preponderance of the evidence, that she entered the United States before January 1, 1982, and resided in this country in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

Finally, beyond the decision of the director, the fact that the applicant failed to disclose her March 1982 and November 1982 absences from the United States is a strong indication that the applicant was either not in the United States during this period or may have been outside the United States beyond the period of time allowed by regulation. As the appeal will be dismissed on the grounds discussed above, this issue need not be examined further

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