

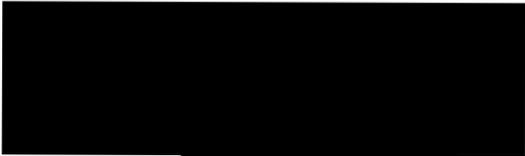
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U.S. Citizenship
and Immigration
Services

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FILE: MSC 02 173 63806

Office: HOUSTON

Date: **MAY 13 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. 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 "Robert P. Wiemann".

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, Texas, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The district director decided 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 by section 1104(c)(2)(B) of the LIFE Act. This decision was based on the director's determination that the applicant had exceeded the forty-five (45) day limit for a single absence from the United States as well as the aggregate limit of 180 days for total absences from the United States during the requisite period.

On appeal, the applicant asserts that at the time of her initial interview, due to her "imperfect English" she was unable to explain to the interviewing officer that she had explained to the individual who prepared her Form I-687 application that she had departed the United States in 1985 and returned with a tourist visa in April of the same year.

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. Section 1104(c)(2)(B)(i) of the LIFE Act; 8 C.F.R. § 245a.11(b).

"Continuous residence" is defined in the regulations at 8 C.F.R. § 245a.15(c)(1), as follows:

Continuous residence. An alien shall be regarded as having resided continuously in the United States if:

- (1) 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. [Emphasis added.]

The applicant indicated on her Form I-687 application that she departed the United States in February 1985 because her grandmother was ill and returned in March 1985 with a non-immigrant visa.

The director's determination that the applicant had been absent from the United States for over 45 days was based on the applicant's testimony taken at the time of her LIFE interview and an entry stamp in her passport. The applicant asserted that she departed the United States for Mexico in February 1985 and returned in March of the same year with a B-2 non-immigrant visa. The applicant's Mexican passport, reveals that on March 25, 1985, the applicant was issued a B-2 multiple entry non-immigrant visa and she lawfully entered the United States on April 4, 1985.

On November 25, 2005, the applicant was advised in writing of the director's intent to deny the application. In her notice of intent, the director indicated that the applicant's absence exceeded 45 days for a single absence as well as the aggregate of 180 days during the requisite period and, therefore, the applicant had failed to establish continuous residence in the United States.

On appeal, the applicant states, in pertinent part:

In this first interview on November 07 of 1991, because of my imperfect English, I was unable to explain to the Immigration officer that when I appeared before the person who filled out my first petition, I explained my situation to him, indicating that my first entry into this country was in March of 1981, and that I left this country in 1985, returning with a tourist visa in the month of April of the same year.

Subsequently, in December 1987, I left the country again for no longer than 30 days to spend Christmas with my family, returning in January of 1988. But this person told me that he could not enter that information in my petition, since I had no proof in regard to this exit. I explained to him that when I reentered this country the officer at the border only examined my visa and immediately told me I could continue, without stamping my passport.

Out of ignorance of the law I did not insist that the person assisting me add this information to my petition, thinking that the said person was surely right, naturally assuming that he had better information in regard to this requirement than I did.

During the [LIFE] interview with the Immigration Official I was asked about my absence from the country in 1985, to which I responded that I did not remember. I was again asked the same questions, and because of the pressure and my imperfect knowledge of English, added to my nervousness, I responded incoherently that I believed it was between February of 1985 and March of the same year. That was the only question that the official made in regard to my absences from the country, and he never asked about my absence between May of 1987 and May of 1988.

It is noted that although the applicant indicated on her Form I-687 application to have returned to the United States in March 1985, the applicant did indicate on the accompanying *LULAC* Form to Determination of Class Membership dated October 23, 1991, that she entered the United States with a B-1 visa on April 5, 1985.

Because the *actual date* of the 1985 departure from the United States was not listed on her Form I-687 application, in her statement on appeal or obtained at the time of her LIFE interview, it cannot be determined that the applicant exceeded the 45-day limit for a single absence from United States. Based on the applicant's entry date stamp contained in her passport and her statement on appeal, it is concluded that the applicant did not exceed the aggregate limit of 180 days for total absences during the requisite period.

Eligibility exists for an alien who would otherwise be eligible for legalization and who was present in the United States in an unlawful status prior to January 1, 1982, and reentered the United States as a nonimmigrant in order to return to an unrelinquished unlawful residence. 8 C.F.R. § 245a.2(b)(9). An alien described in this paragraph must receive a waiver of the inadmissibility charge as an alien who entered the United States by fraud. Section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C), 8 C.F.R. § 245a.2(b)(10).

As a result of the applicant's misrepresentation in procuring a B-2 non-immigrant visa in 1985, the applicant is inadmissible under section 212(a)(6)(C) of the Act. However, such inadmissibility may be waived. The record reflects that along with her Form I-687 application, the applicant filed a Form I-690, Application for Waiver of Grounds of Excludability.

In her Notice of Intent to Deny, the director also advised the applicant that she had provided no primary evidence to establish her 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).

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.

In this instance, the applicant submitted evidence which tends to corroborate her claim of continuous residence in the United States during the requisite period. The district director has not established that the information in this evidence was inconsistent with the claims made on the application, or that it was false information. As stated in *Matter of E--M--*, *supra*, when something is to be established by a preponderance of evidence, the applicant only has to establish that the asserted claim is probably true. That decision also points out that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. The documents that have been furnished may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

The documentation provided by the applicant supports by a preponderance of the evidence that the applicant satisfies the statutory and regulatory criteria of entry into the United States before January 1, 1982, as well as continuous unlawful residence in the country during the ensuing time frame of January 1, 1982 through May 4, 1988, as required for eligibility for legalization under section 1104(c)(2)(B)(i) of the LIFE Act.

Accordingly, the applicant's appeal will be sustained. The district director shall continue the adjudication of the application for permanent resident status.

ORDER: The appeal is sustained.