

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



L2

FILE: MSC 03 001 61138

Office: LOS ANGELES

Date:

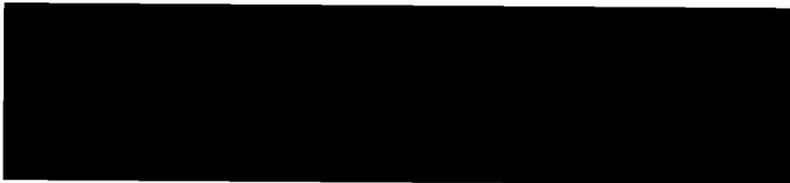
MAY 23 2008

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.

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 director denied the application because the applicant had established that she entered the United States prior to January 1, 1982. The director therefore concluded that the affidavits submitted by the applicant were insufficient to establish that she continuously resided in an unlawful status from prior to January 1, 1982, through May 4, 1988.

On appeal, counsel states that the director misinterpreted the rationale of the Board of Immigration Appeals (BIA) in *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989), and that proof of entry into the United States is not a requirement in order to “substantiate or to create a foundation on which affidavits may stand as evidence of continuous residence.”

An applicant for permanent resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act; 8 C.F.R. § 245a.11(b).

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).

Matter of E-M- does not stand for the proposition that affidavits may only be used to establish residence once the applicant has submitted proof of initial entry. Rather, the case stands for defining the standard of proof that an applicant must meet in order to meet his burden of proof. 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. at 79-80. 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 petitioner 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 or petition.

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 a form to determine class membership, which she signed under penalty of perjury, the applicant stated that she first entered the United States in 1981 when she crossed the border without inspection. The applicant stated on her Form I-687, Application for Status as a Temporary Resident, which she signed under penalty of perjury on November 16, 1993, that she left the United States once during the required period, when she traveled to Mexico on December 10, 1987, to see her family. She stated that she returned on January 10, 1988. The applicant also stated that she worked as a babysitter from 1981 to 1991, and that she lived at the following addresses: [REDACTED] in La Puente, California from 1981 to 1987; [REDACTED] in Acienda Heights, California from 1984 to 1988; and [REDACTED] in La Puente from 1988 to the date of her Form I-687 application. The applicant did not explain the overlap in the dates that she stated she lived at both [REDACTED] and [REDACTED]. In block 34 of the Form I-687 application, the applicant specifically denied any affiliation with a church, club or other organization.

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

1. A June 23, 1993, affidavit from [REDACTED] in which he stated that he is a friend of the applicant and that she resided in La Puente, California from 1981. The affiant did not provide information regarding his initial acquaintance with the applicant or the basis of his knowledge of her residency in 1981.
2. A June 23, 1993, affidavit from [REDACTED], in which he stated that he is a friend of the applicant and that she resided in La Puente, California from 1984. The affiant did not provide information regarding his initial acquaintance with the applicant or the basis of his knowledge of her residency in 1984.
3. A June 23, 1993, affidavit from [REDACTED] in which he stated that he is a friend of the applicant and that she resided in La Puente, California from 1986. The affiant did not provide information regarding his initial acquaintance with the applicant or the basis of his knowledge of her residency in 1986.
4. A June 23, 1993, affidavit from [REDACTED] in which she stated that, to her knowledge, the applicant was out of the country from December 1987 to January 1988. The affiant did not identify her relationship with the applicant and did not state the basis of her knowledge of the applicant's absence from the United States.
5. A partial translation of a copy of a letter from the applicant's mother, apparently verifying her trip to Mexico from December 10, 1987, to January 10, 1987. Because the applicant failed to submit certified translations of the documents, however, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

In response to the director's Notice of Intent to Deny (NOID) dated March 7, 2006, the applicant submitted the following documentation:

6. A September 13, 2002, affidavit from [REDACTED], in which she stated that she had known the applicant as a personal friend since the applicant was 15 years old, "approximately in

1980.” The affiant stated that she met the applicant when the applicant came to work as a babysitter in her aunt’s home in Oxnard, California.

7. March 21, 2006, affidavits from [REDACTED] and [REDACTED] in which they stated that, beginning in 1981, they brought food and letters to the applicant in La Puente from her mother in Mexico.
8. A September 13, 2002, affidavit from [REDACTED], in which he stated that he had known the applicant since she was 10 years old, and that he was told that she came to work at her aunt’s home when she was 15 years old. The affiant claimed no first hand knowledge of the applicant’s presence in the United States during the qualifying period.
9. A March 14, 2006, affidavit from [REDACTED], in which she stated that she met the applicant when the applicant came to work as a babysitter in her aunt’s home in Oxnard, California. The affiant stated that the applicant participated in her wedding on January 14, 1984. The applicant submitted a copy of the January 14, 1984, marriage certificate for the affiant and a photograph that they state are of the bride and the applicant at the wedding.
10. A March 24, 2005, letter from [REDACTED], parochial vicar of St. Anthony’s Church in Riverside, California. Father [REDACTED] stated that, according to church records, the applicant had been a registered member of the parish since 2001 “but has been an active member many years before she registered.” The letter did not specify whether the applicant’s participation in the church occurred during the qualifying period.

On appeal, the applicant submits the following additional documentation:

11. A copy of a July 18, 2006, notarized statement from [REDACTED], in which he state that he has been a personal friend of the applicant since her arrival in the United States in 1980. He stated that he met the applicant in Oxnard, California when she came to work as a babysitter in her aunt’s home.
12. A July 18, 2006, affidavit from [REDACTED], in which he states that he has known the applicant since she was a child, and that she came to the United States in 1980. He states that he had been in touch with her since that time.
13. A copy of a July 17, 2006, affidavit from [REDACTED], in which he states that he knows the applicant has been residing in the United States since 1980. The affiant states that he had known the applicant’s parents since 1963. However, he did not state the basis of his knowledge of the applicant’s residence in the United States during the requisite period.
14. A copy of a July 18, 2006, notarized statement from [REDACTED] in which he states that he had known the applicant since 1978, and that “[a]fter two years, she came to live to [sic] the U.S.A.”
15. A copy of a July 18, 2006, affidavit from [REDACTED], in which she states that the applicant has been in the United States since 1980. The affiant states that she knew the applicant in Mexico as a child, and that the applicant called her to tell her that the applicant was now living in the United States.

16. A July 24, 2006, unsigned but notarized statement from [REDACTED], in which he states that he met the applicant, his cousin, in 1980, when she was 12 years of age, and she called to tell him she had come to live in the United States. He states that they have celebrated different holidays and other occasions together since that time.
17. A copy of a July 17, 2006, notarized statement from [REDACTED] in which he stated that he had been a friend of the applicant since 1982, and that he met her when she came to visit cousins in Riverside, California.
18. A copy of a July 19, 2006, affidavit from S [REDACTED], in which he states that he met the applicant in 1983, at the wedding of her cousin, and that they have kept in touch since that time.
19. A copy of a July 19, 2006, affidavit from [REDACTED] in which he stated that he met the applicant in 1983, when she came to Riverside, California for a Quincenera.
20. A copy of a July 19, 2006, affidavit from [REDACTED], in which she stated that she met the applicant in 1983 when the applicant came to Riverside, California for a Quincenera.
21. A July 17, 2006, affidavit from [REDACTED] in which she states that she was a personal friend of the applicant in Mexico and met her again in the United States in 1984.
22. A July 18, 2006, affidavit from [REDACTED] in which she states that he was a personal friend of the applicant in Mexico and met her again in the United States in 1984.

The applicant submits copies of various receipts. However, they do not provide evidence that they were issued to the applicant.

The applicant also submitted copies of envelopes addressed to her in the United States. Most of the canceled postmarks are illegible. However, at least two of the envelopes that are addressed to the applicant at [REDACTED] La Puente, California, where she claimed to have lived from 1981 to 1987, contain postage stamps dated in 1991. Another envelope addressed to [REDACTED] and [REDACTED] at [REDACTED] contains a U.S. postage stamp issued in 1991. The record reflects that [REDACTED] is the name of the applicant's husband. Additionally, copies of medical identification cards issued to the applicant for medical treatment during her pregnancy, with dates in 1991 and 1992, and other documentation in the record dated in 1991 and 1992, show an address for the applicant of [REDACTED] in La Puente.

In her statement submitted on appeal, the applicant stated that she came to the United States in December 1980. The applicant stated that she crossed with her mother who used her border-crossing card that authorized her husband and children to enter with her. The applicant stated that she chose to remain in the United States and stayed with her mother's cousin. She stated that in January 1981, she went to La Puente, California to live with her mother's friend and began babysitting. The applicant also submits a copy of a statement by her mother, which confirms the information in her own statement.

The applicant has provided conflicting statements regarding her entry into the United States. On her form to determine class membership, she stated that she first entered the United States in 1981 when she crossed the border without inspection. However, in her statement submitted on appeal, she stated that she crossed the border into the United States in December 1980 with her mother on a valid border-crossing card.

The applicant submitted affidavits indicating that the affiants became acquainted with the applicant when she came to work as a babysitter in her aunt's home in Oxnard. However, in her statement on appeal, the applicant stated that she only stayed in Oxnard for approximately a month before moving to La Puente to live with her mother's friend. The applicant provided no documentation from any of her clients or her mother's friend that would corroborate her employment as a babysitter.

Furthermore, the applicant claims to have lived at [REDACTED], in La Puente, California from 1981 to 1987, and at [REDACTED] in La Puente from 1988 to the date of her Form I-687 application on November 16, 1993. However, documentation submitted by the applicant indicates that she was living at [REDACTED] in 1991 instead of 1981.

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. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa application. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The applicant has submitted no competent objective evidence to resolve these inconsistencies in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect, and it must be concluded that she has failed to establish by a preponderance of the evidence that it was more likely than not that she resided continuously in the United States during the qualifying period.

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.