

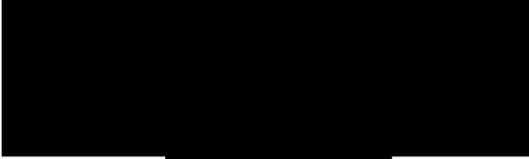
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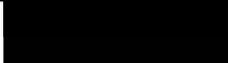
U.S. Citizenship
and Immigration
Services

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FILE:



MSC 02 161 61730

Office: BALTIMORE

Date:

OCT 01 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.

John H. Vaughan
for

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 director in Baltimore, Maryland. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

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

On appeal counsel asserts that the evidence submitted by the applicant is sufficient to establish that she has resided in the United States continuously in an unlawful status since 1981.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. See section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

“Continuous unlawful residence” is defined at 8 C.F.R. § 245a.15(c)(1), as follows: “An alien shall be regarded as having resided continuously in the United States if *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.” (Emphases added.)

“Continuous physical presence” is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: “An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of *brief, casual, and innocent absences* from the United States.” (Emphasis added.) The regulation further explains that “[b]rief, casual, and innocent absence(s) as used in this paragraph means *temporary, occasional trips abroad* as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.” (Emphasis added.) 8 C.F.R. § 245a.16(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 its amenability to verification. See 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 regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant’s employment must: provide the applicant’s address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant’s duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The applicant, a native of Colombia who claims to have lived in the United States since November 1981, filed her application for legal permanent resident status under the LIFE Act (Form I-485) on March 10, 2002. At that time, the record included the following evidence of the applicant’s residence in the United States during the years 1981 through 1988.

- A letter from [REDACTED] the general manager of Splendorform Brassiere Inc. in Long Island City, New York, dated June 21, 1990, stating that the applicant was employed from December 12, 1981 to August 16, 1986 in the packer department.
- An undated letter from [REDACTED], coordinating manager for ServiceMaster Industries Management Services in Downers Grove, Illinois, stating that the applicant was one of its employees.
- A letter from Father [REDACTED] the assistant pastor at St. Augustine’s R.C. Church in Union City, New Jersey, dated May 15, 1990, stating that the applicant had been a constant visitor of the church since 1981.
- A Middlesex County College Student Self-Report Health Form in the applicant’s name, dated December 1981.

- Two copies of immunization forms from [REDACTED] indicating that the applicant was given MMR on November 24, 1981 and on December 4, 1981.
- Copies of New York State and New York City Resident Income Tax Returns for the applicant for the years 1983, 1985, and 1986.

At her interview for LIFE legalization on December 3, 2002, the applicant submitted an affidavit from Mercedes Approvato, a resident of Somerset, New Jersey, dated November 27, 2002, stating that she had known the applicant since 1987, and that they have maintained a steady friendship.

In a Notice of Intent to Deny (NOID), dated October 21, 2005, the director, after listing pertinent documentation in the record, indicated that the applicant had not provided sufficient credible evidence to establish that she resided continuously in the United States from before January 1, 1982, through May 4, 1988. Specifically, the director cited information from the applicant indicating that she entered the United States in 1987 on a B-2 visa. Since it appeared that the applicant was in lawful status after the entry on a B-2 visa, and the applicant failed to show the duration of her absence from the United States prior to her entry in 1987, the director indicated that the record did not establish the applicant's eligibility for adjustment of status under the LIFE Act. The director also noted that the applicant submitted an incomplete Form I-693, Medical Examination. Specifically, the director noted that the medical examination did not indicate the results of an HIV test, as required to establish admissibility under Section 212(a)(1)(A)(i) of the Immigration and Nationality Act (INA). Finally, the director noted that the applicant failed to demonstrate a sufficient knowledge of United States history and civics at her LIFE legalization interview. The applicant was given 30 days to submit additional evidence.

In response, counsel asserted that the applicant entered the United States illegally before January 1, 1982 and has resided in an unlawful status since then, so that her entry in 1987 with a B-2 visa did not render her ineligible for adjustment of status under the Act. Counsel also asserted that the applicant's absence for 27 days in 1987 did not interrupt her continuous physical presence in the United States from November 6, 1986 through May 4, 1988. Counsel submitted an undated statement from the applicant that she traveled to Colombia in 1987 for 27 days, that she returned the same year on a B-2 visa, and that she could not recall the days she was absent, as well the following additional documentation:

- An affidavit from [REDACTED] R.C. Church, in Union City, New Jersey, dated September 14, 2003, stating that he knew the applicant in 1981 when the congregation size was small, that the applicant was a longtime registered parish member, that she regularly attended church services from 1981 to 1991, and that he had firsthand knowledge that the applicant was physically present in the United States from 1981 to 1991.
- A completed Form I-693, Medical Examination Form.

- A letter from [REDACTED] dated December 20, 2002, stating that the applicant – whom he referred to as [REDACTED] – and her husband, [REDACTED] were in his office during the period of 1981-1990.

On September 28, 2006, the director issued a Notice of Decision denying the application. The director noted that the applicant failed to provide any credible evidence to establish the duration of her trip to Colombia in 1987. The director noted that the affidavits and other evidence in the record failed to support the applicant's claim that her trip to Colombia in 1987 lasted for about 27 days. The director concluded that the applicant failed to establish that she resided in the United States continuously from before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the director failed to give proper weight to the evidence submitted by the applicant and her statement that she was only absent from the United States for 27 days. In counsel's opinion, the totality of the evidence established the applicant's continuous residence and physical presence in the United States from before January 1982 through May 4, 1988. Counsel submitted additional documentation with the appeal, specifically:

- A letter from [REDACTED] a resident of Bogota, Colombia, dated October 25, 2006, stating that he is the applicant's father, that the applicant came from the United States to visit him in Colombia during his recovery from a cardiac arrest and that the applicant remained in Colombia for a three week period in September 1987.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that she has not.

The letters of employment from [REDACTED] dated June 21, 1990, and from [REDACTED] (undated), do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because they do not provide the applicant's address at the time of employment, do not state the job duties of the applicant, do not declare whether the information was taken from company records, and do not indicate whether such records are available for review. The letters were not supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant actually had the jobs attested. In addition, the letter from [REDACTED] did not state the dates of the applicant's employment. For the reasons discussed above, the employment letters have little

probative value as evidence of the applicant's continuous residence in the United States during the years 1981 through 1988.

The letter and affidavit from Father [REDACTED] of St. Augustine's Church, dated May 15, 1990 and September 14, 2003, respectively do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(v), which specifies that attestations by religious and related organizations (A) identify the applicant by name, (B) be signed by an official (whose title is shown), (C) show inclusive dates of membership, (D) state the address where the applicant resided during the membership period, (E) include the organization seal impressed on the letter or the letterhead of the organization, (F) establish how the author knows the applicant, and (G) establish the origin of the information about the applicant. The letter and affidavit do not specify the duration of the applicant's membership in the church and do not state where the applicant lived at any point in time between 1981 and 1988. They do not indicate how and when Father [REDACTED] met the applicant, and whether the information about her attending services since 1981 was based on [REDACTED]'s personal knowledge, church records, or hearsay. The AAO notes that a memo in the file from Citizenship and Immigration Service (CIS) Officer [REDACTED] dated March 23, 2005, indicated that she contacted the pastor of St. Augustine Church in Union City, New Jersey, and that the pastor stated that the applicant was a member of the parish since 1981. However, this information is not sufficient to establish that the applicant resided continuously in the United States in an unlawful status from 1981 through May 4, 1988. Since Father Navarro's letter and affidavit do not comply with sub-parts (C), (D), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), the AAO concludes that they have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The letter from [REDACTED] dated December 20, 2002, does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(iv), because it does not state the name and address of the applicant, the nature of treatment or services received, and the dates of treatment. [REDACTED] referred to the applicant as [REDACTED] but there is no documentation in the record to show that the applicant was ever known by that name. In view of the substantive deficiencies noted above, the letter has little probative value as evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The entries on the immunization forms are handwritten and do not indicate the applicant's address at the time of service. The forms are not supplemented by medical records or other official documentation to verify that the applicant received the medical services as indicated in November and December 1981. Although a memo in the file from CIS Officer [REDACTED] dated March 23, 2005, indicated that she contacted [REDACTED] office to verify that the applicant was given the immunizations, the information does not cure the substantive deficiencies noted above. Even if the AAO accepted the immunization record as evidence that the applicant resided in the United States in late 1981, it is not sufficient to establish that the applicant resided continuously in the United States from then through May 4, 1988. The AAO concludes that the immunization forms have little probative value as evidence of the applicant's continuous residence in the United States from before January 1, 1988 through May 4, 1988.

The copies of the applicant's New York State and New York City Resident Income Tax returns for the years 1981 through 1985 are not accompanied by any earnings statements or pay stubs to verify that the applicant earned income in the United States during those years. Additionally, the forms are not accompanied by certified records from the State of New York to verify that the applicant filed tax returns for those years. In view of these substantive shortcomings, the tax forms are not persuasive evidence of the applicant's residence in the United States during the years 1983, 1985, and 1986.

The affidavit from [REDACTED] dated November 27, 2002, claiming that she and the applicant had maintained a close friendship since they met in 1987, provides very little information about the applicant's life in the United States and her interaction with the affiant. The affidavit is not accompanied by any documentary evidence from the affiant – such as photographs, letters, and the like – of her personal relationship with the applicant in the United States during the 1980s. Most importantly, the affiant did not claim to have known the applicant before 1987. In view of these substantive shortcomings, the AAO finds that the affidavit has little probative value as evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

The letter from [REDACTED] dated October 25, 2006, has little probative value as evidence of the applicant's continuous residence in the United States during the 1980s because the affiant was not residing in the United States himself. Also, the affiant only confirmed that the applicant was in Colombia in September 1987, but provided no information about when the applicant arrived, how long she stayed and where she went at the conclusion of her trip.

The Student Self-Report Health Form is of little probative value as evidence of the applicant's residence in the United States in the 1980s because the form is not supplemented by any other official documentation from the school to show that the applicant signed and submitted the form to the school in December 1981. Even if the AAO accepts the form as credible evidence, the form in and of itself does not establish that the applicant resided continuously in the United States from December 1981 onward.

Based on the foregoing analysis of the evidence, the AAO concurs with the director's decision that the applicant has failed to establish that she entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A).

Beyond the decision of the director, an applicant for permanent resident status must demonstrate under section 1104(c)(2)(E)(i) of the LIFE Act regarding basic citizenship skills, that he or she:

- (I) meets the requirements of section 312(a) of the Immigration and Nationality Act (8 U.S.C. 1423(a)) (relating to minimal understanding of

ordinary English and a knowledge and understanding of the history and government of the United States); or

- (II) is satisfactorily pursuing a course of study (recognized by the [Secretary of Homeland Security]) to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

Under section 1104(c)(2)(E)(ii) of the LIFE Act, the Secretary of Homeland Security may waive all or part of the above requirements for aliens who are at least 65 years of age or who are developmentally disabled. *See also* 8 C.F.R. § 245a.17(c).

An applicant may establish that he or she has met the requirements of section 312(a) of the Immigration and Nationality Act (Act) by demonstrating an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language, and by demonstrating a knowledge and understanding of the fundamentals of the history and of the principles and form of government of the United States. *See* 8 C.F.R. § 245a.17(a)(1) and 8 C.F.R. §§ 312.1 – 312.3.

An applicant may also establish that he or she has met the requirements of section 1104(c)(2)(E)(i) of the LIFE Act by providing a high school diploma or general educational development diploma (GED) from a school in the United States. *See* 8 C.F.R. § 245a.17(a)(2). The high school or GED diploma may be submitted either at the time of filing the Form I-485 LIFE Act application, subsequent to filing the application but prior to the interview, or at the time of the interview. *Id.*

Finally, an applicant may establish that he or she has met the requirements of section 1104(c)(2)(E)(i) of the LIFE Act by establishing that:

He or she has attended, or is attending, a state recognized, accredited learning institution in the United States, and that institution certifies such attendance. The course of study at such learning institution must be for a period of one academic year (or the equivalent thereof according to the standards of the learning institution) and the curriculum must include at least 40 hours of instruction in English and United States history and government. The applicant may submit certification on letterhead stationery from a state recognized, accredited learning institution either at the time of filing Form I-485, subsequent to filing the application but prior to the interview, or at the time of the interview (the applicant's name and A-number must appear on any such evidence submitted).

8 C.F.R. § 245a.17(a)(3).

An applicant who fails to pass the English literacy and/or the United States history and government tests at the time of the initial LIFE interview shall be afforded a second opportunity after six months

(or earlier at the request of the applicant) to pass the required tests or to submit the evidence described above. *See* 8 C.F.R. § 245a.17(b).

On December 3, 2002, the applicant was interviewed for LIFE legalization. She passed the test of ordinary English language but failed the test of basic knowledge of U.S. history and government during the examination portion of the interview.

In the NOID dated October 21, 2005, the director notified the applicant that she failed to meet the citizenship skills requirement of a basic understanding of the history and government of the United States at her LIFE Legalization interview, and that she must pass the test in order to adjust status.

At her second interview for LIFE legalization, on July 28, 2006, the applicant again failed the test of basic knowledge of United States history and government for the second and final time.

In his September 28, 2006, decision, however, the director neglected to determine whether the applicant has met the basic citizenship skills requirement under the LIFE Act.

The applicant has not satisfied the basic citizenship skills for LIFE legalization under any of the three options set forth in the regulations. On two separate occasions she failed to pass examinations of her knowledge of U.S. history and government, as required under 8 C.F.R. § 245a.17(a)(1). She did not provide a high school diploma or GED from a school in the United States, as required under 8 C.F.R. § 245a.17(a)(2). Nor did the applicant show at the time of her second interview on July 28, 2006, that she had attended, or was attending, a state recognized, accredited learning institution in the United States, following a course of study which spans one academic year and that includes 40 hours of instruction in United States history and government, as required under 8 C.F.R. § 245a.17(a)(3).

The applicant is not 65 years old or older and there is no evidence in the record that she is developmentally disabled. Thus, the applicant does not qualify for either of the exceptions listed in section 1104(c)(2)(E)(ii) of the LIFE Act.

The applicant has failed to demonstrate that she has met the basic citizenship skills requirement as described at 1104(c)(2)(E) of the LIFE Act. On this ground as well, therefore, the applicant has failed to establish her eligibility for legalization under the LIFE Act.

The appeal will be dismissed, and the application denied.

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