

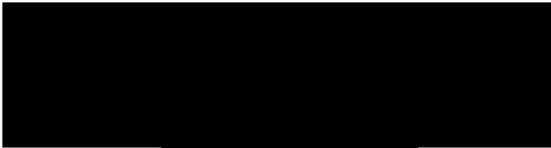


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FILE:



Office: LOS ANGELES

Date: **OCT 22 2008**

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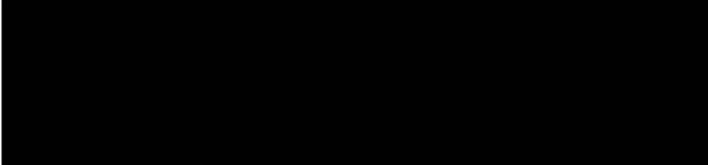
Applicant:



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 Director, Los Angeles, California, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to demonstrate that she entered the United States before January 1, 1982, and resided in a continuous unlawful status from then through May 4, 1988.

On appeal, counsel for the applicant submits a brief and additional documentation.

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 states 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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). *See* 8 C.F.R. 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.12(f). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

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 record reflects that the applicant, who was born in Mexico on August 21, 1972, submitted a Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act), in or about March 1989. The applicant claimed to have entered the United States without inspection in April 1981, when she was eight years-old, and to have departed the United States on only one occasion since that entry – in order to visit Mexico from June to July 1987. In support of the Form I-687, the applicant submitted the following documentation:

- A fill-in-the-blank affidavit, dated February 8, 1990, from the applicant's father, [REDACTED], stating that she had resided with him in Lake Elsinore, California since April 1981.
- A letter, dated February 8, 1990, from [REDACTED] stating that she was a babysitter for the applicant from April 1981 to September 1984. The letter is not notarized.
- A fill-in-the-blank affidavit, dated February 8, 1990, from [REDACTED] stating that the applicant worked for her in her residence as a part-time housekeeper since October 1984. The affidavit does not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i) regarding employment letters.
- Five similar fill-in-the-blank affidavits, dated February 8, 1990, from [REDACTED] and [REDACTED] stating that the applicant had lived in Lake Elsinore, California, since 1981. None of the affiants provided telephone numbers for contact, and none provided details that would lend credibility to any direct and personal knowledge regarding the applicant's entry and residence during the requisite time period.

The applicant filed the current Form I-485, Application to Register Permanent Resident or Adjust Status, under Section 1104 of the LIFE Act on June 7, 2002. The applicant was interviewed in connection with

her application on August 28, 2004. Initially, the applicant stated that she had come to the United States by car with a friend to be with her father in Lake Elsinore, and that her mother arrived a week later. When questioned as to why her parents would let her travel without family, she then claimed that she came with her sister and brother. When questioned as to whether or not she attended school in the United States, she said yes, and when asked for those records, she said none were available. When advised that school records could be obtained, she then stated that she had them at home. The applicant stated that upon her entry in 1981, she attended second grade and remained in school in the United States until 1988. At the conclusion of the interview, the applicant was issued a Request for Evidence (RFE) on Form I-72, requesting that she provide: (1) Department of Education records from Riverside County, California, for the years 1981 through 1988; (2) final court dispositions of all charges against her; and, (3) proof from the California State Department of Social Services showing the years that she accepted cash assistance, and the year that the assistance was discontinued.

In response to the RFE, the applicant submitted evidence that she was arrested by the Sheriff's Office in Riverside County, California, and charged with possession of a controlled substance for sale, and that, because she was a first-time offender, was not convicted of the offense but was placed in a diversion program.

In a Notice of Intent to Deny (NOID) the Form I-485, dated February 13, 2007, the director found that the applicant had failed to demonstrate that she entered the United States before January 1, 1982, and resided in a continuous unlawful status from then through May 4, 1988. The director specifically noted that the applicant had failed to provide school records, as requested in the RFE, and that the affidavits previously submitted in support of the Form I-687, were not sufficient to establish her entry into the United States in 1981.

In response to the NOID, the applicant submitted an un-translated document in Spanish,<sup>1</sup> and a certification, dated February 22, 2007 (printed on June 23, 1989), from the Lake Elsinore Unified School District indicating that grade nine records showed that the applicant had neither attempted nor completed any credits.

In a Notice of Decision (NOD), dated April 3, 2007, the director denied the application. The applicant, through counsel, filed an appeal from the director's decision on April 27, 2007.

On appeal, counsel states that applicant did not make any false statements and that the facts of the applicant's case should be viewed under a totality of the circumstances. Counsel asserts that it is clear that Citizenship and Immigration Services (CIS) is trying to deny administratively what the Legislature has tried to provide applicants under the LIFE Act, and concludes that CIS's "nit-picky attack on the

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<sup>1</sup> Any document containing a foreign language submitted to CIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R § 103.2(b)(3).

applicant's case is but another attempt to camouflage the real story and undermine the application process." In support of the appeal, counsel provides the following additional documentation:

- A photocopy of a Deed of Trust, dated March 1, 1985, issued to the applicant's father. While this document establishes the applicant's father's presence in the United States in 1985, it provides no evidentiary weight regarding the applicant's presence in the United States at that time.
- A pay-stub, dated May 27, 1988. The applicant's name and the date of issuance are handwritten on the pay-stub and there is no indication as to what company was the issuing authority.
- Letters and affidavits, dated in April and May 2007, from: (1) the applicant's mother, [REDACTED], stating that she came to live with the applicant in the United States in 1981; (2) the applicant's aunt, [REDACTED] stating that she has known the applicant all of her life; (3) [REDACTED], stating that she has personally known the applicant since 1981. Ms. [REDACTED] further states that she and the applicant lived in Lake Elsinore and have kept their friendship throughout the years – that their children have become close and also enjoy a friendship; (4) [REDACTED], stating that she has known the applicant, a good friend, since around 1982; (5) [REDACTED] and [REDACTED] stating that they have known the applicant as a Perris, California, resident since 1981; (6) [REDACTED], stating that she has known the applicant since 1981; (7) [REDACTED] and [REDACTED], stating that they have known the applicant since 1981, and that [REDACTED] use to be her babysitter; (8) [REDACTED] stating that the applicant has been her friend since 1982; (9) [REDACTED] stating that she has known the applicant since approximately 1981; and, (10) [REDACTED], stating that she and the applicant went to school together at Lake Elsinore Elementary in 1983. While all of the affiants attest to having met the applicant in 1981 or 1982, they are generally vague as to how they date their acquaintances with the applicant, how often and under what circumstances they had contact with the applicant during the requisite period, and provide little, in any, details that would lend credibility to their claims of alleged 26-year relationships with the applicant. Other than for the applicant's mother and aunt, it is unclear as to what basis the affiants claim to have direct and personal knowledge of the events and circumstances of the applicant's residence in the United States. As such, the statements can be afforded minimal weight as evidence of the applicant's residence and presence in the United States for the requisite period.
- Photographs of the applicant, dated 1986 and 1987, and evidence that the applicant attended Elsinore Jr. High School during the school year 1986 – 1987.

The regulation at 8 C.F.R. § 245a.12(e) provides that “[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods.” Preponderance of the evidence is defined

as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black’s Law Dictionary 1064 (5<sup>th</sup> ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

The applicant claims to have attended school in the United States since the second grade. However, she has not provided any school records dated prior to 1987. The lack of documentation to establish the applicant’s residence in the United States before 1986 - other than third-party letters and affidavits (“other relevant documentation) from acquaintances and relatives - to support the applicant’s claim of continuous residence during the relevant period detracts from the credibility of her claim, particularly in view of the fact that the affiants provide little details as to the affiants knowledge of the applicant’s entry prior to January 1, 1982, and little detail that would lend credibility to their alleged long-term relationships with the applicant.

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 lack of credible supporting documentation and the inconsistencies noted in the record, it is concluded that the applicant has failed to establish by a preponderance of the evidence that she entered the United States before January 1, 1982, and maintained continuous unlawful residence since such date through May 4, 1988, as required for eligibility for adjustment of status to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Thus, 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.