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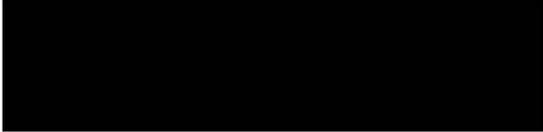
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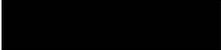
U.S. Department of Homeland Security
20 Mass Ave. NW Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

L2



FILE: 
MSC 01 304 60413

Office: HOUSTON

Date: **SEP 02 2008**

IN RE: Applicant: 

PETITION: 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, Houston, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined 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, and that she maintained continuous physical presence in the in the United States during the period from November 6, 1986 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel for the applicant submits a brief.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988. The pertinent statutory provision reads as follows:

Section 1104(c)(2)(B)(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.

“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.

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 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.13(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 submitted a Form I-687, Application for Status as a Temporary Resident (under Section 245A of the Immigration and Nationality Act) in or about August 1991. On her Form I-687 (and in a “L.U.L.A.C. Class Member Declaration” submitted in connection with the Form I-687) the applicant indicated that she had been absent from the United States on the following dates: December 30, 1983, to January 10, 1984; January 2, 1987, to January 20, 1987; December 22, 1987, to January 9, 1987 (It is assumed here, that the applicant may have meant to write January 9, **1988** instead of **1987**); March 15, 1988, to March 27, 1988; February 25, 1989, to March 10, 1989; August 20, 1989, to September 15, 1989; December 30, 1989, to January 9, 1990; March 28, 1990, to April 11, 1990; September 1, 1990, to September 8, 1990; and, January 20, 1991, to February 2, 1991.

In support of her Form I-687, the applicant also submitted the following documentation:

1. A fill-in-the-blank “Employment Affidavit,” dated April 1, 1991, from [REDACTED] owner of [REDACTED] Houston, Texas, stating that the applicant had been employed at a flea market on Telephone Road on weekends since

December 1981, earning \$100.00 per week. In a letter, dated July 31, 1991, Ms. [REDACTED] states that the applicant lived at her same address and reiterates the employment information provided in the earlier affidavit.

2. A letter, dated May 30, 1991, from [REDACTED] of Houston, Texas, stating that she was a co-worker with the applicant at "La Ojarasca" bakery in Houston from March 1986 to March 1990.
3. A letter, dated May 16, 1991, from [REDACTED] of Houston, Texas, stating that he was a co-worker with the applicant at "Mi Casa Es Su Casa" restaurant from December 1981 until the restaurant closed in 1986. Mr. [REDACTED] states that he and the applicant remain friends and see each other on weekends.
4. A fill-in-the-blank "Affidavit of Witness to Residency in the United States," dated February 23, 1991, from [REDACTED], of Houston, Texas, stating that the applicant had resided at [REDACTED], Houston, since October 1981. Ms. [REDACTED] states that she was introduced to the applicant by a mutual friend, [REDACTED], in Houston in October 1981, and that she has seen the applicant at least once a month continuously since 1981 to the date of signing the affidavit.
5. An undated fill-in-the-blank "Affidavit of Witness to Residency in the United States," similar to No. 3, above, from [REDACTED] of [REDACTED], Houston, stating that the applicant had resided at [REDACTED], Houston, since October 1981. Mr. [REDACTED] states that he was introduced to the applicant by a mutual friend at "Su Casa" restaurant, and that he has seen the applicant at least once a week, or more often, continuously since 1981 to the date of signing the affidavit.
6. A photocopy of a page from a passport showing that a non-immigrant visa for pleasure (B-2) was issued at the United States Consulate in Nuevo Laredo, Mexico on December 16, 1981 (valid for multiple entries through December 1985), and showing an entry date into the United States at Laredo, Texas, on December 16, 1981. An entire copy of the passport, including the identification page, is not contained in the record, therefore, it is not clear that the visa was issued to the applicant or how often she made entries into the United States during the validity of the visa.
7. Photocopies of pages from a passport issued to the applicant at the Mexican Consulate in Laredo, Texas, on November 28, 1983 (valid until November 27, 1988), containing a Mexican Border Crossing Card and B-1/B-2 Nonimmigrant visa, issued at the United States Consulate in Monterrey, Mexico, on November 4, 1985. Several, but not all, of the pages from the passport were provided, showing various entry dates into the United States (January 1987, January 9, 1987, September 15, 1989, January 9, 1990, April 10, 1990, September 3, 1990, February 2, 1991) but many of which are illegible.

The applicant filed the current Form I-485, Application to Register Permanent Resident or Adjust Status, under the LIFE Act on July 31, 2001. On May 1, 2003, the applicant was interviewed in connection with her application regarding her presence in the United States from prior to January 1, 1982, through May 4, 1988. At the time of interview, the applicant stated, under oath, and signed a statement, that she first entered the United States through Laredo, Texas, on December 16, 1981, remained in the United States about five to six months, and then returned to Mexico. The second time she entered the United States on November 21, 1982, remained in the United States about eight to nine months, and then returned to Mexico. The third time she entered the United States on November 17, 1983; the fourth time she entered the United States on January 10, 1984, and then returned to Mexico in 1985 in order to obtain a visa at the United States Consulate in Monterrey, Mexico, on November 4, 1985. She remained in Mexico until her fifth entry on January 9, 1987. The seventh and eighth times she entered the United States were on March 27, 1988, and February 2, 1991. The applicant stated that all of her entries were made as a non-immigrant.

On August 12, 2003, the district director issued a Notice of Intent to Deny (NOID) the application, a copy of which was forwarded to applicant's counsel, because the applicant had failed to establish her continuous unlawful status in the United States from before January 1, 1982, through May 4, 1988. The director noted that the applicant had stated under oath at her interview that she had been absent from the United States for extended periods of time in 1982, 1983, and from November 1985 to January 1987. The applicant was granted thirty days to submit a rebuttal and/or submit evidence supporting why her application should not be denied. The record reflects that the applicant failed to respond to the notice. Therefore, on February 13, 2004, district director denied the application on the basis of the reasons stated in the NOID.

While not directly dealt with in the district director's decision, there must be a determination as to whether the applicant's prolonged absences from the U.S. were due to "emergent reasons." Although this term is not defined in the regulations, *Matter of C-*, 19 I. & N. Dec. 808 (Comm. 1988) holds that *emergent* means "coming unexpectedly into being."

At no point has the applicant put forth any reasons or any valid basis for her extended departures, as attested to at interview, from the United States during the requisite time period, or any evidence of her intent to return to the United States within 45 days of each departure. Accordingly, in the absence of evidence that the applicant intended to return within 45 days after each departure, it cannot be concluded that emergent reasons "which came suddenly into being" delayed or prevented the applicant's returns to the United States beyond the 45-day periods of absence attested to at interview.

On appeal, counsel for the applicant asserts that the applicant has only made occasional trips to Mexico (in May/June 1982, August/September 1983, 1985, 1987, and 1988), that lasted no longer than two to three weeks and that her absences were consistent with policies reflected in the immigration laws of the United States. Counsel further asserts that the applicant previously submitted affidavits from places that she worked as evidence that she was present in the United States during the requisite time period. The employment letter from [REDACTED] (see No. 1, above), however, merely speaks of the

applicant's part-time (weekend) employment and does not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i) in that it does not 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 affidavits from co-workers (Nos. 2 and 3) are not supported by evidence establishing the identifications and/or actual residences of the affiants in the United States during the period of time in which they attest to having knowledge of the applicant and provide little detail as to the affiants' knowledge of the applicant's entry. Similarly, in the fill-in-the-blank affidavits (Nos. 4 and 5) provided, the affiants do not provide evidence of their identification/residence in the United States, and lack details that would lend credibility to their having direct and personal knowledge of the events and circumstances of the applicant's residence in the United States during the relevant period. As such, these affidavits afford minimal weight and little probative value as evidence of the applicant's residence and presence in the United States during the relevant period.

In summary, the applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), and no hospital or medical records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv). The applicant also has not provided documentation (including, for example, money order receipts, children's birth certificates, bank book transactions, letters of correspondence, a Social Security card, an automobile contract, or insurance documentation) according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) and (C) through (K). The documentation provided by the applicant consists of incomplete photocopies of her passport pages containing entry stamps, not all of which are legible, (see Nos. 6 and 7, above) and third-party affidavits, "other relevant documentation" (see Nos. 1 through 4), that lack evidentiary weight and probative value.

Furthermore, there are serious discrepancies between the information provided by the applicant in connection with her Form I-687, and the statements she provided at interview, under oath, regarding the dates and lengths of her absences from the United States. Doubt cast on any aspect of the evidence submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of an application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

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. The applicant has failed to establish that she maintained continuous physical presence in the in the United States during the period from November 6, 1986 through May 4, 1988, as required by 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.