

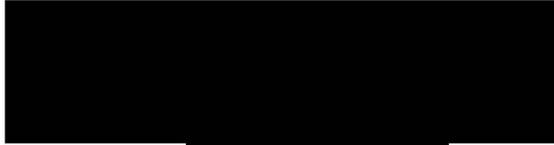
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U.S. Citizenship  
and Immigration  
Services

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FILE:

MSC 03 172 60654

Office: LOS ANGELES

Date: SEP 22 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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

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, Los Angeles, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate 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.

On appeal, the applicant contends that she did arrive in the United States in 1981, but got very confused regarding dates during the interview. She asserts that she responded too quickly to the questions without taking the time to think about her answers. She states that she “just gave out dates without assurance of what I was saying.”

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.

“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.

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.” The applicant has not submitted any evidence to establish that an emergent reason delayed her return to the United States.

An applicant for permanent resident status under section 1104 of the LIFE Act 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 through May 4, 1988. See § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant 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 section 1104 of the LIFE Act. 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.* at 80. 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 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). 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).

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet the burden of establishing, by a preponderance of the evidence, that the applicant’s claim of continuous unlawful residence in the United States during the requisite period is probably true. Upon an examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has failed to meet this burden.

On March 21, 2003, the applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status pursuant to section 1104 of the Life Act (I-485 LIFE Legalization Application). In support of her claim, the record contains several declarations, a social security statement, and the applicant’s statements and application forms.

The record contains three declarations from [REDACTED] [REDACTED] stated that she has known the applicant since 1981 as a family friend. [REDACTED] stated that she has known the applicant since 1983. She also stated that the applicant babysat her child for a period of time. [REDACTED] stated that she has known the applicant

since June 1981, for approximately 22 years. All of the declarants failed to provide details regarding their claimed friendships with the applicant or to provide any information that would indicate personal knowledge of the applicant's 1981 entry to the United States, her places of residence or the circumstances of her residence over the years of their claimed relationships. Although they claim to have known the applicant since 1981, they failed to note how or where they met her. Lacking relevant details, these declarations have minimal probative value.

The record contains a declaration, dated in 2003, from [REDACTED] stated that she has known the applicant from 1981 to 2003. She stated that the applicant worked for her for 13 years in her house, helping with the housecleaning and childcare. The declarant failed to provide any information that would indicate personal knowledge of the applicant's 1981 entry to the United States, her places of residence or the circumstances of her residence over the years of her claimed relationship. Although she claims to have known the applicant since 1981, the declarant failed to note how or where she met her. The declaration provides minimal probative value.

The record contains a declaration, dated in 2007, from [REDACTED] stated that the applicant worked with her as a housekeeper from May 1981 to 1984. She also stated that the applicant resided in her home and did not pay for electricity or water. The declarant failed to provide any information that would indicate personal knowledge of the applicant's 1981 entry into the United States or her place of residence from 1981 to 1984. The declarant also failed to provide details regarding how or where she met the applicant. It is also noted that the record contains a Form I-687, Application for Status as a Temporary Resident, signed by the applicant. The applicant stated in her Form I-687 that she resided at one place of residence from 1981 to 1986. Thus, the declaration is inconsistent with the applicant's Form I-687. Given the discrepancy and lack of details, this declaration provides little probative value.

The record contains two declarations from [REDACTED] stated that she has known the applicant since 1981. [REDACTED] stated that she has known the applicant since 1981. She also stated that the applicant works for her and takes care of her son. Both declarants failed to provide details regarding their claimed friendships with the applicant or to provide any information that would indicate personal knowledge of the applicant's 1981 entry to the United States, her places of residence or the circumstances of her residence over the years of their claimed relationships. Although they claim to have known the applicant since 1981, they failed to note how or where they met her. In addition, neither declaration is amenable to verification. Accordingly, these declarations will be given no weight as evidence of the applicant's residence in the United States during the requisite period.

The record includes a Personal Earnings and Benefit Estimate Statement (PEBES), dated February 8, 2007, from the Social Security Administration's web site. The statement indicates that the applicant paid social security and medicare for the years 1985, 1986, and 1988. This evidence will be given some weight as evidence of the applicant's residence in the United States in the above respective years.

The record also contains notes from the applicant's interview, dated February 22, 2007, in which the applicant stated that she left the United States in 1983 to give birth to her baby and returned one year later. On appeal, the applicant contends that she got very confused regarding dates during the interview. She contends that she responded too quickly to the questions without taking the time to think about her answers.

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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The record contains no independent objective evidence to explain the above inconsistency.

In addition, in her Form I-687, the applicant stated that she had only one absence from the United States in 1987 for an emergency. In her Form I-485, the applicant stated that her daughter, [REDACTED], was born in Mexico on March 4, 1983. Based on this information, the AAO concludes that the applicant gave birth to her daughter in Mexico in 1983, and based on her own testimony, she remained in Mexico in excess of the permitted absence as defined under the regulation at 8 C.F.R. § 245a.15(c)(1). The record contains no evidence to establish that an emergent reason delayed the applicant's return to the United States.

For the reasons noted above, the documents submitted in support of the applicant's claim have been found to provide minimal probative value as evidence of the applicant's entry into the United States prior to January 1, 1982, and continuous residence in the United States for the requisite period. Although there are several declarations in the record that refer to the relevant years, they are bereft of sufficient detail to be found credible or probative. Not one affiant indicates credible personal knowledge of the applicant's entry to the United States in 1981 or credibly attests to her presence in the United States from 1981 to 1984. Furthermore, based on the applicant's own testimony and information provided in her application, she was absent from the United States for one year in 1983.

The AAO finds that, upon an examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the applicant has not shown by a preponderance of the evidence that she resided in the United States for the duration of the statutory period. Given this, it is concluded that the applicant has failed to establish that she entered the United States before January 1, 1982 and maintained continuous, unlawful residence from such date through May 4, 1988, as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, 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.