

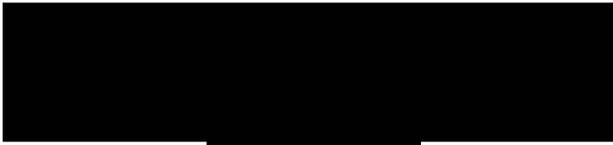
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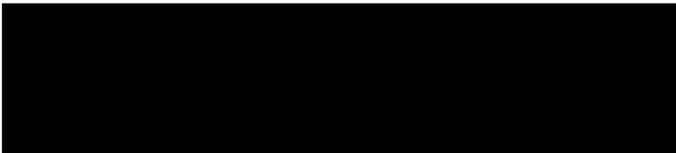
Office: SAN DIEGO

Date: **FEB 03 2009**

IN RE: Applicant: [Redacted]

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. The file has 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 "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: On February 28, 2006, the Director, San Diego, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application, finding that the applicant failed to submit sufficient evidence to establish her continuous presence in the United States during the statutory period. The director noted that several documents in the record, including employment records, her marriage certificate, and a Border Crossing card all indicated that the applicant was residing in Mexico during the statutory period.

On appeal, counsel for the applicant asserts that the evidence in the record proves that the applicant had the required continuous physical presence. Counsel asserts that just because the applicant spent some time visiting Mexico for health care she did not interrupt her period of continuous physical presence.

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence 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. 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 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 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 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony. 8 C.F.R. 245a.12(f). Affidavits that indicate specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits that provide 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.

A LIFE Legalization applicant must also provide evidence establishing that, before October 1, 2000, he or she was a class member applicant in a legalization class-action lawsuit. *See* 8 C.F.R. 245a.14. In this case, the record reflects that the applicant applied for such class membership by submitting a "Form for Determination of Class Membership in *CSS v. Meese* [CSS lawsuit]," accompanied by a Form I-687 "Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act)."

On May 7, 2002, the applicant submitted the current Form I-485, Application to Register Permanent Residence or Adjust Status. On January 13, 2003, and October 14, 2004, the applicant appeared for an interview based on the application.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden and establish by a preponderance of the evidence, that her claim of entry into the United States before January 1, 1982, and continuous residence in the United States during the requisite period is probably true.

The documentation that the applicant submits in support of her application consists of a residential lease agreement dated July 6, 1984, several fill-in-the-blank pay stubs from [REDACTED] dated from 1981 to 1984, and fill-in-the-blank affidavits from friends and family members. The lease is not supported by rent receipts or a letter from the landlord and the pay stubs are not supported by a corresponding employment verification letter, tax documents, or other documentation. The affidavits fail to indicate any personal knowledge of the applicant's claimed entry to the United States in 1981 and fail to provide sufficient relevant details regarding the circumstances of the applicant's residence during the statutory period.

Upon review of the evidence in the record, the AAO finds that the applicant has failed to overcome the bases for denial. There is, in fact, clear evidence that contradicts the applicant's claims. The record of proceedings contains a Mexican Border Crossing Card, F.M.-1(Forma 13) obtained by the applicant on July 6, 1984. The record also contains a letter dated August 11, 1986, from the Mexican Social Security Institute indicating that the applicant was working for a company in Mexico at that time. In addition, the record contains paycheck stubs from that

company in Mexico from 1987 and the applicant's marriage certificate indicating she was married in Mexico on March 15, 1988.

The applicant claims on her "Declaration of Applicant Re Residence," submitted in response to the director's January 4, 2006, Notice of Intent to Deny (NOID), that she has lived in the United States since 1981 and explains why she obtained a Mexican Social Security Services card in 1986. She states that she went to Mexico in 1986 because she was sick and did not have health insurance or enough money to pay for a doctor in the United States. She states that a doctor in Tijuana recommended that she obtain health benefits from Mexican Social Security Services. In order to obtain these health benefits she worked for a few weeks for a company in Mexico. She states that she obtained an FM-13 and voter card in order to try to get a visa to the United States. She states that she married her husband in Mexico because he did not want to get married in the United States. She asserts that the address on all of these documents is her parents' address. Regarding other evidence of residence at issue on appeal, the applicant simply submitted an unsupported rental agreement and receipts. Moreover, affidavits cannot overcome independent objective evidence that contradicts the applicant's claims or actually shows the applicant to have been outside the United States during the requisite period of residency.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In this case, there is competent objective evidence contradicting the applicant's claim that he resided for the requisite period in the United States.

Pursuant to 8 C.F.R. § 245a.12(e), 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 inconsistencies noted in the record and objective evidence contrary to the applicant's claim, it is concluded that the applicant has failed to overcome the bases for denial set forth by the director and has failed to establish by a preponderance of the evidence that he 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.