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Office: Baltimore

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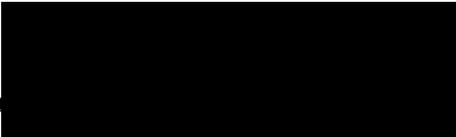
Applicant:



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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter 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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Baltimore, Maryland, and is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because 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, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel asserts that that the applicant has submitted sufficient evidence to establish that she continuously resided in an unlawful status in the United States for the requisite period.

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

“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 amenability to verification. 8 C.F.R. § 245a.12(e).

When something is to be established by a preponderance of the evidence it is sufficient that the proof establish that it is probably true. *See Matter of E-- M--*, 20 I. & N. Dec. 77 (Comm. 1989).

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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant is a class member in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (INA) on August 19, 1991. At part #33 of the Form I-687 application where applicants were asked to list all residences in the United States since their first entry, the applicant listed two addresses in Brooklyn, New York as her residences in this country in the period from July 1981 to October 1988.

At part #32 of the Form I-687 application where applicants were asked to provide information regarding their immediate family, the applicant indicated that her son, [REDACTED] had been born in St. Martin on July 5, 1982. However, at part #35 of the Form I-687 application where applicants were asked to list all absences from the United States beginning from January 1, 1982, the applicant listed only one absence from this country when she traveled to St. Martin to visit relatives in November 1986. The applicant failed to provide any explanation as to how her only claimed absence from the United States occurred in November 1986, when she had given

birth to her son in St. Martin on July 5, 1982. This discrepancy seriously undermines the applicant's claim of continuous residence in the United States for the period in question.

The record shows that the applicant subsequently filed her Form I-485 LIFE Act application to the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services, or CIS) on October 9, 2001.

In support of her claim of continuous residence in the United States since prior to January 1, 1982, the applicant submitted employment letters, affidavits of residence, postmarked envelopes, correspondence, bills, school records, an application for life insurance, paycheck stubs, rent receipts, money order receipts, a driver's license, and identification cards.

However, a review of the electronic and administrative records revealed that the applicant possessed another Administrative file or A-file, [REDACTED] which contained a separate Form I-485, Application to Register Permanent Residence under Section 249 of the INA, and was submitted to the Service on May 17, 1996. That A-file has now been consolidated into the current record of proceedings. In support of the I-485 registry application, the applicant included submitted evidence, including employment letters, correspondence, receipts, payroll records, school documents, money order receipts, and a membership card that reflect that she resided at [REDACTED] the period from 1977 through at least November 15, 1982. In addition, the record contains a photocopied page from the applicant's passport that reflects that she entered the United States from abroad with a B-2 visitor's visa on November 5, 1982, as well as a photocopy of a Form I-94, Arrival/Departure Record, which reflects a subsequent entry by her into the United States from abroad with a B-2 visitor's visa on July 6, 1983. A review of the electronic record reveals that the applicant subsequently entered the United States from abroad with a B-2 visitor's visa on August 29, 1986.

In support of her Form I-485 registry application, the applicant submitted a statement dated January 29, 1997, in which she claimed that she lived in Arlington, Virginia during the period from 1977 through 1982. The applicant also acknowledged that she had absent from the United States for two months from May 1983 to July 1983 in this letter. It is noted that by admitting that she had been absent from the United States for two months (approximately sixty days) in 1983, the applicant has specifically acknowledged that she exceeded the forty-five day limit for single absence from this country as set forth in 8 C.F.R. § 245a.15(c)(1), and, therefore, had not continuously resided in the United States for the requisite period. Nevertheless, as the length of the applicant's admitted absence from this country from May 1983 to July 1983 has not been cited as a specific basis of denial it shall not be discussed further.

On January 6, 2003, the district director issued a notice of intent to deny to the applicant informing her of the Service's intent to deny her LIFE Act application because she had failed to submit sufficient credible evidence to support her claim of residence in the United States since prior to January 1, 1982. The district director concluded that the continuity of the applicant's prior unlawful residence in this country had been broken when she entered the country with a B-2 visitor's visa during the period from January 1, 1982 to May 4, 1988. The district director did not determine whether the applicant's claim of entry prior to January 1, 1982 and continuous unlawful residence was valid, but rather focused on the fact that the applicant was apparently in a lawful nonimmigrant B-2 status when she subsequently re-entered the United States during the period in question. No consideration was given to the applicant's claim that she established an unlawful residence in this country prior to January 1, 1982, and then fraudulently procured the B-2 visitor's visas to return to her

unrelinquished and unlawful residence in the United States. The issue in these proceedings is whether the applicant continuously resided in this country in an unlawful status for the requisite period and the district director failed to consider this issue in its entirety in denying the application. As such, this issue must now be examined to determine the applicant's eligibility for adjustment to permanent residence under section 1104(c)(2)(B) of the LIFE Act.

On her Form I-687 application, the applicant claimed that she began residing in the United States with an address in Brooklyn, New York in July 1981. The applicant submitted supporting documentation attesting to and reflecting her residence in the greater New York City metropolitan area since at least such date through to 1991. However, in support of her Form I-485 registry application, the applicant submitted her own statement and evidence attesting to and reflecting her residence at an address in Arlington, Virginia from 1977 through at least November 15, 1982. The applicant failed to provide any explanation for these conflicting and contradictory claims of residence in the United States and why she had not listed the residence in Arlington, Virginia on the Form I-687 application if she had resided at this address beginning in 1977. This contradictory testimony and evidence seriously undermines the credibility of the applicant's claim of residence for the requisite period, as well as the documentation submitted in support of such claim.

The applicant also claimed that she was only absent from the United States on one occasion in November 1986 in the period from January 1, 1982 to May 4, 1988 on the Form I-687 application. However, as has been previously discussed, the applicant directly contradicted herself by indicating that had given birth to her son, [REDACTED] in St. Martin on July 5, 1982 at part #32 of the Form I-687 application. Furthermore, with her separate Form I-485 registry application, the applicant submitted a statement in which she admitted that she had absent from the United States from May 1983 to July 1983. In addition, the record contains direct evidence demonstrating that the applicant was absent from the United States prior to her entries into this country with a B-2 visitor's visa on November 5, 1982, July 6, 1983, and August 29, 1986. The applicant failed to put forth any explanation as to why she did not disclose these additional absences on the Form I-687 application. The fact that the applicant failed to list these additional absences only serves to further impair the credibility of her claim of residence in this country for the period from January 1, 1982 to May 4, 1988.

In response to the notice of intent to deny, the applicant's former counsel correctly pointed out that her entries into this country with a B-2 visitor's visa were not lawful in that she had obtained the visas through fraud because she was returning to an unrelinquished residence in this country. The record contains a Form I-690, Application for Waiver of Grounds of Inadmissibility, to overcome any ground of inadmissibility arising from her misrepresentation in fraudulently procuring the B-2 visitor's visas. However, the issue to be examined in these proceedings is the credibility of the applicant's claim of residence and supporting documents in light of the omissions, discrepancies, conflicts, and contradictions that have been cited above.

On appeal, the applicant's current counsel asserts that she applicant has submitted sufficient evidence to establish that she continuously resided in an unlawful status in the United States for the requisite period. However, the applicant has failed to provide truthful testimony regarding her multiple absences from the United States in the period from January 1, 1982 to May 4, 1988. Further, the applicant has provided contradictory testimony and supporting evidence relating to the dates and places she purportedly resided in this country in the period from 1977 to November 15, 1982. Counsel's statements cannot be considered as sufficient to overcome the contradictory information contained in the record regarding the applicant's claim of residence and absences from this country in the period from January 1, 1982 to May 4, 1988.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. 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 (BIA 1988).

The omissions, discrepancies, conflicts, and contradictions both in the applicant's own testimony and supporting evidence seriously impair the credibility of her claim of residence in the United States for the requisite period. The applicant has failed to establish having resided in continuous unlawful status in the United States from prior to January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B) 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.