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U.S. Citizenship  
and Immigration  
Services

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FEB 23 2005

FILE:

Office: Los Angeles

Date:

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

The district director denied the application because the evidence submitted by the applicant had not established that she had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, counsel asserted that the applicant failed to receive the district director's notice of intent to deny. Subsequent to his appeal, counsel submitted a clarification statement dated January 5, 2004. Upon examination of the record, it appears that the intent notice had in fact been sent to the applicant's prior address. Accordingly, on January 11, 2005, the AAO attempted to send a communication to counsel along with a photocopy of the requested notice of intent. Although the requested communication was sent to counsel's most current address of record, the notice was subsequently returned to the AAO by the U.S. Postal Service. As such, the appeal will be adjudicated on the basis of documentation now included in the record of proceedings.

An applicant for permanent resident status 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. 8 C.F.R. § 245a.11(b).

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. 8 C.F.R. § 245a.12(e). When something is to be established by a preponderance of evidence it is sufficient that the proof only establish that it is *probably* true. See *Matter of E-- M--*, 20 I&N Dec. 77 (Comm. 1989). Preponderance of the evidence has also been 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).

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).

In an attempt to establish continuous unlawful residence since before January 1, 1982, as claimed, the applicant furnished the following evidence:

- A letter from [REDACTED] Associate Pastor of the Church of the Immaculate Conception, Los Angeles, California, who states that the applicant is a member/parishioner of his church;
- A joint affidavit from [REDACTED] attesting to the applicant having continually resided in the U.S. since 1983. The affiants indicate they are relatives of the applicant and that the applicant resided with them from 1983 to 1988;
- An affidavit from [REDACTED] who attests to the applicant's residence in the U.S. since January 1981;

- A letter dated January 9, 1988 from the UCLA Medical Center to the applicant, requesting verification of health care expenditures for December 1987;
- A photocopy of a birth certificate from the Los Angeles County Register, which references the November 28, 1987 birth of the applicant's daughter;
- A letter from [REDACTED], who indicates the applicant performed housework at his place of residence from March 1982 through 1985;
- A handwritten letter from [REDACTED] who states that the applicant has been a friend of her family for many years;
- A letter from [REDACTED] who states he has known the applicant since 1980;
- Photocopies of dental billing statements dating from May 1987 and November 1987; and
- Five original store receipts from L.A. Superstar – an electronics store – carrying dates from 1981 through 1987.

The regulations at 8 C.F.R. § 245a.2(d) provide a list of documents that may establish continuous residence and specify that "any other relevant document" may be submitted. However, while the affidavits, third-party statements and photocopied lease agreements provided by the applicant could possibly be considered as evidence of continuous residence during the period under discussion, questions have arisen with regard to discrepancies in the applicant's documentation which impact on the overall credibility of his claim.

According to notes taken by the examining officer at the time of the applicant's February 10, 2003 adjustment interview, the officer placed a verification call to the store manager of L.A. Superstar in connection with store receipts submitted by the applicant in support of her claim to continuous residence since 1981. The five receipts in question carry dates from September 20, 1981 through February 11, 1987. As indicated in the district officer's notes, the store receipts, while crumpled, set forth purchase transactions which appear to have been recorded in ballpoint pen very recently, especially given the fact that they supposedly date from approximately twenty years ago. In addition, the district officer was informed by the L.A. Superstar store manager that that enterprise had only been opened since February 2003. Under these circumstances, the store receipts provided by the applicant can not be deemed credible evidence.

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner 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 fraudulent nature of the documentation provided by the applicant regarding alleged purchases of electronic equipment from L.A. Superstar leads to questions as to the credibility and reliability of the applicant's claim.

As stated above, the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. According to the transcript of the applicant's adjustment interview, she informed the examining district officer that she first entered the U.S. in January

1981. However, according to the affidavit from Salvador Dominguez, the affiant has known the applicant since 1980. Unless the affiant, [REDACTED] is signifying that he knew the applicant prior to her purported January 1981 entry into the U.S. – which is not clear, his statement directly contradicts the applicant's own claim regarding her alleged 1981 entry date. The letter from [REDACTED] makes reference to the applicant being a member of his parish, but fails to specify a date as to when the applicant's membership may have commenced. Likewise, the handwritten letter from Patricia S. Garcia indicates the applicant had been a friend of her family, but also fails to specify a date as to how long the affiant has been acquainted with the applicant or how long the affiant knows the applicant to have resided in the U.S. The joint residence affidavit from Wilbur and [REDACTED] indicates that the affiants are both in-laws of the applicant and, therefore, family members. Such affiants must be viewed as having an obvious interest in the outcome of these proceedings, rather than as independent, objective and disinterested parties.

It should also be noted that many of the affidavits attesting to the applicant's residence are not accompanied by the affiants' phone numbers and, therefore, fail to provide a means by which the affiants may be readily contacted for purposes of verification. Moreover, few of the affiants provide any details regarding the nature of their relationships with the applicant or the basis for their continuing awareness of her residence in the U.S.

Given the applicant's submission of evidence which, upon further examination, appears to have been fraudulently created, along with her reliance on affidavits which do not meet basic standards of probative value, it is concluded that she has failed to establish continuous residence in an unlawful status from prior to January 1, 1982 through May 4, 1988, as required. Accordingly, the applicant is ineligible for permanent resident status under section 1104(c)(2)(B) of the LIFE Act.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.