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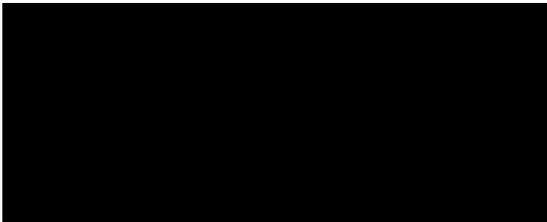
Applicant:



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, Los Angeles, California, 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. This decision was based on the district director's conclusion that the applicant had failed to submit sufficient evidence of residence in this country for the requisite period.

On appeal, counsel asserts that affidavits submitted by the applicant are sufficient evidence to establish her continuous unlawful residence in the United States since prior to January 1, 1982. Counsel cites the holding reached in *Vera-Villegas v. Immigration and Naturalization Service*, 330 F.3d 1222, 1225 (9th Cir. 2003) to support his assertion.

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).

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 or about February 10, 1989. 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 indicated that she had been absent from this country on two separate occasions when she traveled to Guatemala for unspecified periods of time for her mother's funeral in 1986 and her child's illness in 1987. In support of her claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted the following documents: two affidavits of residence, four employment letters, a letter from a jewelry store owner, a student identification card, a California Identification Card, and three money order claim receipts.

The record shows that the applicant subsequently filed her Form I-485 LIFE Act application with the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services, or CIS) on March 12, 2002. In support of her claim of continuous residence in the United States since prior to January 1, 1982, the applicant included copies of previously submitted documents, as well as the following new documentation: a photocopied greeting card, a photocopy of a postmarked envelope, and three affidavits of residence.

On July 2, 2004, 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. Specifically, the district director observed that the applicant had submitted only affidavits that were not accompanied by other credible documentation. However, pursuant to *Matter of E--M--*, *supra*, affidavits in certain cases *can* effectively meet the preponderance of evidence standard, and the district director cannot refuse to consider such evidence because it is unaccompanied by other forms of documentation. Moreover, the district director failed to acknowledge that the applicant had submitted photocopies of contemporaneous documents to support her claim of residence and to address such evidence in the notice. Therefore, the district director's conclusions regarding the sufficiency of the documentation submitted by the applicant in support of her claim of residence as expressed in the notice of intent must be considered as questionable.

In addition, it must be noted that the applicant submitted two additional affidavits of residence, seven photographs, an original greeting card and an original hand-written receipt in response to the notice of intent to deny.

In this instance, the applicant submitted evidence, including affidavits, and both contemporaneous and government issued documents, which tends to corroborate her claim of residence in the United States during the requisite period. The district director has not established that the information in this evidence was inconsistent with the claims made on the application, or that it was false information. As stated on *Matter of E--M--*, *supra*, when something is to be established by a preponderance of evidence, the applicant only has to establish that the proof is probably true. That decision also points out that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. The documents that have been furnished may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period. Consequently, the district director's findings regarding the sufficiency of the applicant's evidence of residence as expressed in the notice of intent to deny cannot be considered as an adequate basis to deny the application.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center [or other office] does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

"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.

As noted above, at part #35 of the Form I-687 application, the applicant indicated that she had been absent from this country on two separate occasions when she traveled to Guatemala for unspecified periods of time for her mother's funeral in 1986 and her child's illness in 1987. The record shows that the applicant was subsequently interviewed regarding her Form I-687 application at the Service's Los Angeles, California District Office on September 5, 1995. During the course of the interview, the applicant provided a signed sworn statement written in her own hand and in Spanish in which she admitted in pertinent part, "I departed July 18, 1987 and returned November 22, 1987." The English translation of the applicant's statement is that "I departed July 18, 1987 and returned November 22, 1987." The applicant also made reference to her trip to Guatemala in 1986, but failed to specify the length of this absence.

In response to a CIS request for additional evidence relating to her claim of residence in this country during the requisite period issued on June 4, 2004, the applicant submitted three signed statements, one in Spanish and two in English, in which she admitted that she had traveled to Guatemala in July 1986 because her husband had died and that she stayed in her country for four months. While the applicant stated that her mother and father both died shortly thereafter in August of 1987, she indicated that these events forced her to come back to the United States before she had planned because of her economic situation rather than delaying her return to this country. Further, in response to the notice of intent to deny, the applicant subsequently submitted a declaration in which she reiterated that she was absent from the United States from July 1986 to November 1986 because of her husband's death.

Clearly, the applicant's two admitted absences from the United States from July 1986 to November 1986 and again from July 18, 1987 to November 22, 1987, both exceed the forty-five day limit allowed for a single absence from this country in the period between January 1, 1982 and May 4, 1988. The applicant has failed to claim that she experienced any exigent circumstances that delayed her return to the United States. Therefore, any delay the applicant may have experienced in accomplishing the purposes of this trip cannot be considered to be due to an emergent reason within the meaning of either 8 C.F.R. § 245a.15(c)(1) or *Matter of C-*, 19 I. & N. Dec. 808 (Comm. 1988).

Given the fact that the applicant has acknowledged that she exceeded the forty-five day limit allowed for a single absence from this country in the period from January 1, 1982 to May 4, 1988 when she traveled to Guatemala from July 1986 to November 1986 and again from July 18, 1987 to November 22, 1987, she has failed to establish having resided in continuous unlawful status in the United States for such period 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 on this basis as well.

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