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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:

MSC 02 192 60309

Office: HOUSTON

Date:

AUG 14 2006

IN RE:

Applicant:



APPLICATION:

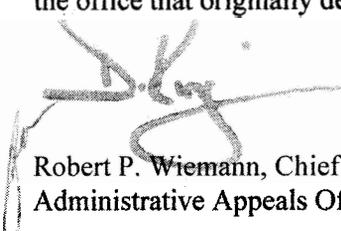
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000)

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. Any further inquiry must be made to that office.

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

The director concluded that the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. This decision was based on the director's conclusion that the applicant had exceeded the forty-five (45) day limit for a single absence as well as the aggregate limit of one hundred and eighty (180) days for total absences, from the United States during this period, as set forth in 8 C.F.R. § 245a.15(c)(1). The director further determined that the applicant failed to establish that she was continuously physically present in the United States from November 6, 1986 through May 4, 1988, as required by section 1104(c)(2)(C) of the LIFE Act.

On appeal, the applicant asserts that her total absences from the United States have not exceeded 167 days and that no single absence was in excess of 45 days.

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. Section 1104(2)(c)(B) of the LIFE Act; 8 C.F.R. § 245a.11(b). "Continuous unlawful residence" is defined in the regulations at 8 C.F.R. § 245a.15(c)(1), as follows:

*Continuous residence.* An alien shall be regarded as having resided continuously in the United States if:

- (1) 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. [Emphasis added.]

The director's determination that the applicant had been absent from the United States for over 45 days was based on the applicant's statement during her adjustment interview, in which she stated that she first entered the United States without inspection in November 1980, and that she returned to Mexico in 1983 to work so that she could obtain a passport and U.S. visa. The applicant further stated that she obtained a passport and border crossing card in December 1985, and reentered the United States on December 20, 1985. The applicant stated that, while residing in Mexico, she commuted with the border crossing card from 1985 to 1987, and that she had resided permanently in the United States since 1987. The applicant signed this statement under oath on April 20, 2004.

In response to the director's Notice of Intent to Deny (NOID), the applicant denied that she had resided in Mexico from 1983 to 1987, and attributed the misunderstanding during the interview to her deficiency in the English language. We note that the interview was conducted in Spanish, and as noted above, the applicant signed the statement under oath. The applicant stated that she entered the United States for the second time on December 20, 1985, but that the nine different entrances (from 1985 to 1991) into the United States were the result of temporary visits to Mexico. The applicant submitted a copy of her Mexican passport, issued on December 13, 1985, and her border crossing card, issued on December 17, 1985 and reflecting seven entrances into the United States during the required period.

On appeal, the applicant states that she first departed the United States on November 18, 1985, and that her total days absence from the United States did not exceed 180 days and that no single absence was in excess of 45 days. 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).

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 petitioner 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 petitioner 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 or petition.

The applicant stated on her Form I-687, Application for Status as a Temporary Resident, signed on September 11, 1991, that her only absence from the United States during the qualifying period was from August 1987 to September 1987. 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 applicant submitted no objective, verifiable evidence to resolve the inconsistencies in the record. Therefore, she has not submitted sufficient evidence to establish that she continuously resided unlawfully in the United States from prior to January 1, 1982 to May 4, 1988.

Furthermore, assuming that the applicant could establish that she resided in the United States from 1983 to 1987, the evidence fails to establish that she was continuously physically present in the United States from November 6, 1986 through May 4, 1988, as required by section 1104(c)(2)(C) of the LIFE Act. According to the applicant, she was absent from the United States from August 5 to October 25 1987 and from December 20, 1987 to January 2, 1988. As her absent from August to October 1987 exceeded 45 days and she has not established that her prolonged absence was due to emergent reasons, the absence interrupted her "continuous residence" in the United States. Accordingly, she was not physically present in the United States continuously from November 6, 1986 to May 4, 1988.

The applicant has, therefore, failed to establish that she resided in the United States in an unlawful status continuously from before January 1, 1982 through May 4, 1988 and was physically present continuously in the United States from November 6, 1986 to May 4, 1988. Given this, she is 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.