

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



L2

FILE:



MSC 01 359 62161

Office: LOS ANGELES

Date:

NOV 24 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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

The district director determined that the applicant had not demonstrated that she had continuously resided in the United States from before January 1, 1982 through May 4, 1988. The director also determined that the applicant had exceeded the forty-five (45) day limit for a single absence from the United States during this period. Accordingly, the director denied the application.

On appeal, the applicant asserts that since her last arrival in March 1986, she has continuously resided in the United States. The applicant requests that her application be approved due to humanitarian reasons.

To be eligible for adjustment to permanent resident status under the LIFE Act, the applicant must also establish his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and his continuous physical presence in the United States from November 6, 1986 through May 4, 1988. Section 1104(c)(2)(B)(i) of the LIFE Act reads as follows:

In general – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act that were most recently in effect before the date of the enactment of this Act shall apply.

“Continuous 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.]

On May 24, 2004, the applicant was advised in writing of the director's intent to deny the application. In her Notice of Intent, the director indicated that, due to the applicant's absence from the United States from April or May 1985 to March 1986, she had failed to establish continuous residence in the United States.

The director's determination that the applicant had been absent from the United States for over 45 days was based on the applicant's own testimony taken under oath at the time of her interview at the Los Angeles office on May 24, 2004. The applicant asserted that she departed the United States in May 1985 when her father passed away and did not return until March 1986.

On the applicant's Form G-325A, Biographic Information dated September 6, 2001, the applicant listed her residences in the United States from October 1980 to August 1985 and then again from March 1986 to the present. The applicant indicated on the form, “since March 2, 1986 I have stayed continuously in this country-U.S.A.” No address was listed for the period of September 1985 through February 1986.

The applicant, in response to the Notice of Intent to Deny, requested that her application be reconsidered as "I have been in this county continuously [sic] for the past twenty years." The applicant submitted documentation in an effort to establish her residence and physical presence since last entry into the United States on March 2, 1986.

On appeal, the applicant asserts, "I decided to leave briefly when my father died in 1985. I came back with my employer in March 1986 and had stayed in this country continuously until the present."

While not dealt with in the district director's decision, there must, nevertheless, be a determination as to whether the applicant's prolonged absence from the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I. & N. Dec. 808 (Comm. 1988) holds that *emergent* means "coming unexpectedly into being."

In other words, the reason must be unexpected at the time of departure from the United States and of sufficient magnitude that it made the applicant's return to the United States more than inconvenient, but virtually impossible. However, in the instant case, that was not the situation. There is no evidence to indicate that an emergent reason delayed the applicant's return to the United States within the 45-day period. The applicant's prolonged absences would appear to have been a matter of personal choice, not a situation that was forced upon her by unexpected events.

Accordingly, the applicant's 1985 departure from the United States exceeded the 45-day period allowable for a single absence, as well as the 180-day aggregate total for all absences, and interrupted her "continuous residence" in the United States. 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, as required by the statute, section 1104(c)(2)(B)(i) of the LIFE Act, and by the regulations, 8 C.F.R. §§ 245a.11(b) and 245a.15(c)(1).

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. 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 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).

At the time of her interview on May 24, 2004, the applicant indicated that she did not have any evidence to establish her residence from 1981 through 1985. Except for a United Airlines boarding pass issued on March 2, 1986, no documentation has been submitted to establish the applicant's residence and physical presence in the United States during the requisite period. In light of the fact that the applicant claims to have continuously resided in the United States since 1980, this inability to produce supporting affidavits as well as contemporaneous documentation of residence raises questions regarding the credibility of the claim. The applicant has, therefore, failed to establish that she resided in *continuous* unlawful status in the United States from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act. Therefore, the applicant 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.