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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 02 242 63387

Office: LOS ANGELES

Date:

FEB 22 2007

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:



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

The director denied the application because the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988.

On appeal, counsel states that applicant submitted sufficient evidence to establish her continuous residency in the United States during the qualifying period and that her declaration effectively rebutted the grounds for dismissal set forth in the director's Notice of Intent to Deny (NOID). Counsel submits a brief in support of the appeal.

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(c)(2)(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.]

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.

Although Citizenship and Immigration Services (CIS) 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 record contains a copy of the applicant's Mexican passport, issued on April 6 1983 and expiring on April 5, 1988. The passport reflects that the applicant was issued a U.S. Border Crossing Identification Card and B1/B2 Nonimmigrant Visa on October 26, 1987, valid indefinitely and for multiple entries. According to the director, the passport indicates an entry into the United States on December 31, 1987.

On her Form I-687, Application for Status as a Temporary Resident, the applicant stated that, during the qualifying period, she had been absent from the United States in April 1983 and December 1987 for visits to her family in Mexico. In a November 2, 2004 affidavit given in conjunction with her LIFE Act adjustment interview, the applicant stated that she came to the United States in February 1976 to attend her brother's wedding, entering illegally through Tijuana and returned to Mexico after three months. She stated that she returned to the United States in 1978 pursuant to a visitor's visa, and "lived intermittently with" her brothers and sisters. She also stated that she left for Mexico again in July or August 1987 and was gone for "about two or three months," then reentered the United States pursuant to a visa.

In her NOID, the director noted that the applicant admitted to being out of the United States in 1987 in excess of 45 days. The director further noted that the applicant's admitted entries into the United States were apparently pursuant to her border crossing card.

In response to the NOID, the applicant submitted a statement in which she admitted again that she left the United States "in [or] around July or August and went to Mexico for about two or three months to study." The applicant stated that during this time, she reentered the United States "3 to 4 times by [redacted]." The applicant further stated that since she had her passport and visa, she was able to cross the border with no problems. The applicant stated that the purpose of her trips to the United States was to visit her family and friends.

On appeal, counsel states that the applicant does not dispute that she entered the United States in April 1983 and December 1987 pursuant to her border crossing card. Counsel asserts, however, that the applicant was never out of the United States in excess of 45 days.

In a November 2, 2004 sworn statement, the applicant stated that she left the United States for Mexico in July or August 1987 for a period of about two to three months. In a December 4, 2004 statement, the applicant stated that the purpose of her trip was to attend school and contends that she reentered the United States several times for the purpose of visiting family and friends. The applicant submitted no evidence, other than the single entry in December 1987 that is annotated on her border crossing card, that she reentered the United States at any time during the latter part of 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). Further, the applicant's stated purpose of her visits to the United States while she studied in Mexico was to visit family and friends. Thus, her entries into the United States were consistent with the purpose for which her visa and border crossing card were issued. Therefore, those entries were not unlawful.

Accordingly, the applicant has not established that she resided continuously in the United States in an unlawful status from prior to January 1, 1982 through May 4, 1988.

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