



U.S. Citizenship  
and Immigration  
Services

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FILE:

MSC 02 225 65674

Office: LOS ANGELES

Date:

JUL 06 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. 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, 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 concluded that the applicant had failed to establish 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, or 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, counsel states that the applicant has established her eligibility for benefits under the LIFE Act by a preponderance of the evidence. Counsel submitted no additional documentation 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 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 or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480

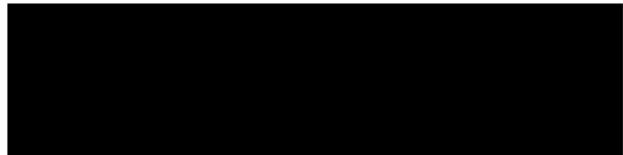
U.S. 421 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is 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).

On a form to determine class membership, which she signed under penalty of perjury on January 7, 1995, the applicant stated that she first arrived in the United States on May 8, 1981 when she crossed the border without inspection. On her Form I-687, Application for Status as a Temporary Resident, which she also signed under penalty of perjury on January 5, 1995, the applicant stated that she was absent from the United States twice during the qualifying period: from December 1, 1985 to January 10, 1986, when she traveled to Mexico to visit her family; and from January 1, 1988 to February 15, 1988 when she traveled to Mexico because of her father’s illness.

The applicant did not list any employment during the qualifying period, indicating that she was a housewife during this time. The applicant identified her addresses as follows:

May 8, 1981 to December 30, 1983  
January 1, 1984 to April 30, 1986  
May 1, 1986 to November 30, 1987  
December 1, 1987 to December 31, 1988



In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant submitted the following evidence:

1. A copy of a June 22, 1981 receipt for registered mail, showing the applicant as the purchaser with an address of [REDACTED] in Costa Mesa, California.
2. An April 21, 2004 affidavit from [REDACTED] in which he stated that the applicant rented a room in his house in Costa Mesa from December 1981 to December 1983. [REDACTED] did not state the address at which he lived from 1981 through 1983. In a separate undated statement, [REDACTED] stated that the applicant came to his house on December 31, 1981 and that she babysat his children “for a few time[s]” until his children left for Mexico in 1984.
3. An April 20, 2004 statement from [REDACTED] in which she stated that she had known the applicant since 1982. [REDACTED] did not indicate the circumstances surrounding her initial acquaintance with the applicant or that the applicant lived in the United States during the period of their friendship.
4. An April 20, 2004 statement from [REDACTED] in which she confirmed that she had known the applicant since 1982, and that “since then,” the applicant babysat her daughters [REDACTED] did not state the circumstances surrounding her initial acquaintance with the applicant or the date that the applicant babysat with her daughters.

5. Copies of sales receipts dated December 18, 1983, and May 9 and November 3, 1984. The documents indicate they are for the applicant; however, they do not reflect the vendor or an address.
6. An April 21, 2004 affidavit from [REDACTED], in which he stated that the applicant rented a room in his house in Tustin, California from December 1984 to December 1986. However, the applicant stated on her Form I-687 application that she lived in Costa Mesa, California during this time frame. 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).
7. An April 21, 2004 affidavit from [REDACTED] and [REDACTED], in which they stated that the applicant lived with them in their home in Tustin, California from December 1984 until the date of the affidavit. However, the applicant did not state that she lived in Tustin at any time during the required period. *See id.*
8. An April 26, 2004 statement from [REDACTED] in which he stated that he had known the applicant for more than 20 years. [REDACTED] did not state that his relationship with the applicant occurred and was maintained while she resided in the United States.
9. An April 25, 2004 statement from [REDACTED], in which he stated that he had known the applicant since 1985. [REDACTED] did not indicate the circumstances surrounding his initial acquaintance with the applicant or that the applicant had lived in the United States during the period of their relationship.
10. A copy of a memo from County of Orange to the prenatal clinic regarding the applicant. The year of the document is presumptively 1986; however, this date is uncertain as it has been written over. Additionally, it does not indicate when the applicant was treated.
11. A copy of a birth certificate for the applicant's son, showing that he was born at the UCI Medical Center in Orange, California on July 16, 1986.
12. An Orange County Consent for Medical Treatment signed by the applicant on September 16, 1987.
13. A copy of a consent form from the Orange County Health Care Agency signed by the applicant on September 16, 1987.
14. A copy of an August 13, 1991 affidavit from [REDACTED] in which he stated that he took the applicant to Mexico on January 1, 1988 and returned to bring her back on February 15, 1988.
15. A copy of a delayed birth certificate for the applicant's child born on April 20, 1988, accompanied by supporting declarations. The document indicates that the child was born "at home" at [REDACTED], an address that the applicant stated she lived from May 1, 1986 to November 30, 1987. Additionally, the birth was not registered until 1990. Therefore, it does not provide contemporaneous evidence of the applicant's presence and residency in the United States during the qualifying period.

A baptismal certificate for the applicant's daughter shows a birth date of April 20, 1988 in Costa Mesa, California. However, as the certificate indicates the child was baptized on April 5, 1992 and the baptismal record on September 19, 1995. Therefore, it is not primary evidence of the applicant's presence in the United States during the qualifying period.

According to the notes taken during the applicant's LIFE Act adjustment interview, the applicant stated that she worked as a baby sitter for [REDACTED] from 1982 to 1984 and for [REDACTED] for approximately six months in 1985. The applicant also stated that she worked for the Newport Pier Restaurant in Newport Beach for approximately six months in 1985, and that in 1987, she cleaned houses for approximately six months. We note that the applicant did not list any employers on her Form I-687 application. The applicant also stated that she left the United States in December 1987 May 1988 to give birth to her child in Mexico, and that she returned in May 1988. The applicant executed a sworn statement on April 27, 2004, confirming that she was out of the United States from December 1987 to May 20, 1988.

The director's Notice of Intent to Deny (NOID) dated December 13, 2004 informed the applicant that inconsistencies existed between the residences where she stated that she lived during the qualifying period and those stated in affidavits submitted on her behalf. The director further informed the applicant that her five-month absence from the United States from December 1987 to May 20, 1988 disqualified her for benefits under the LIFE Act.

In response, the applicant submitted a January 10, 2005 affidavit in which she stated that those who submitted affidavits and other statements on her behalf inadvertently listed their own addresses instead of the ones at which she lived. The applicant further stated that she was out of the United States in excess of 90 days because she was pregnant and did not want to risk crossing the border while pregnant. The applicant stated that this should qualify as an "emergent" reason for her delayed return.

On a Form I-130, Petition for Alien Relative, dated January 13, 1998, the applicant's sister, [REDACTED] stated that the applicant arrived in the United States in May 1985. On March 2, 2007, the AAO issued a NOID to deny, advising the applicant to submit competent, objective evidence to explain the inconsistencies regarding her claimed entry into the United States. In response, the applicant submits a March 28, 2007 statement from [REDACTED] in which she states that her sister first arrived in the United States in December 1981 and that her last entry date was May 1988 instead of May 1985. The applicant also submits a March 24, 2007 statement in which she states that she first entered the United States in December 1981 and that she left the United States in December 1987, returning in May 1988.

The statements of the applicant and her sister bring into question the credibility of the statements of [REDACTED] who stated that he drove the applicant to Mexico in January 1988 and brought her back to the United States in February 1988. It also casts doubt on the receipt for registered mail, which shows that the applicant as the purchaser on June 22, 1981, six months before she now states she first arrived in the United States. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa application. *Matter of Ho*, 19 I&N Dec. at 591.

In response to the NOID, the applicant also submits a March 18, 2007 from [REDACTED], who states that he met the applicant at a party on December 31, 1981; a March 14, 2007 statement from [REDACTED], in which she states that she met the applicant in May 1982; and a March 18, 2007 statement from [REDACTED], in which she states that she has known the applicant since January 1982, the date her brother was born.

These statements, without more, do not constitute competent objective evidence sufficient to resolve the inconsistencies in the record. *Id.*

Further, in her March 24, 2007 statement, the applicant again admitted that she was absent from the United States from December 1987 to May 1988, a period in excess of 90 days. The applicant stated in her January 10, 2005 affidavit that she remained in Mexico because she did not want to cross the border illegally while she was pregnant.

Although the term “emergent” 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.

The applicant knew of her pregnancy prior to her departure from the United States. In her interview, she admitted that the purpose of her trip was to give birth to her child. The applicant submitted no documentation, and did not allege, that complications from the birth kept her from returning to the United States in 45 days or less. Accordingly, the applicant has not established that her four to five months’ absence from the United States was due to emergent reasons.

Additionally, the applicant’s admission that her child was born in Mexico brings into question the State of California delayed birth certificate and the supporting affidavits attesting to the child’s birth and the applicant’s presence in the United States in April 1988.

The applicant’s four- to five-month stay in Mexico during 1987 and 1988 interrupted her “continuous residence” in the United States. Given this absence and the unresolved inconsistencies in the record, the applicant has failed to establish that she resided in the United States in an unlawful status continuously from before January 1, 1982 through May 4, 1988. Further, the applicant has not established that she was physically present in the United States from November 6, 1986 through 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.