



U.S. Citizenship  
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FILE:

MSC 02 207 60210

Office: LOS ANGELES

Date:

JUN 05 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:

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

The district director denied the application because the applicant had: 1) not demonstrated that she had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988; and 2) exceeded the forty-five (45) day limit for single absences from the United States during the requisite period.

On appeal, the applicant provides an explanation regarding her extended absence in 1982. The applicant asserts that she has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. The applicant provides an additional affidavit, her October 30, 1982 marriage certificate and copies of documents that were previously submitted.

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).

“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.]

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 initial interview on September 21, 1989, the applicant informed the interviewing officer that she departed the United States to Mexico in October 1982 to get married and did not return until January 1983. The applicant also indicated that she departed the United States to Mexico in May 1986 to get divorced and returned within 30 days.

At the time of her LIFE interview on December 7, 2004, the applicant reaffirmed her absence dates from the United States.

Here, the submitted evidence is not relevant, probative, and credible. In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence:

- A certified copy of her first son's July 26, 1983, birth certificate and a copy of his immunization record reflecting vaccinations given from January 1984 through November 1, 1988.
- Documentation from the California WIC indicating that her first son was enrolled in WIC from 1984 to 1985.
- A document from the Department of Social Services signed by the applicant in July 1987.
- A certified copy of her second son's November 26, 1987, birth certificate and a copy of his immunization record reflecting vaccinations commencing on March 3, 1988.
- An affidavit notarized August 29, 1989, from [REDACTED] of Long Beach, California, who indicated that the applicant was in his employ as a babysitter from February 1981 to January 1984, and attested to her Long Beach residence since February 1981.
- An affidavit notarized September 20, 1989, from [REDACTED] of Santa Monica, California, who indicated that he had known the applicant since March 1981 and attested to her residence in Los Angeles since that time.
- A copy of her divorce certificate entered on May 6, 1986 in Mexico. The certificate indicates that the marriage occurred on October 30, 1982.
- An affidavit notarized August 29, 1989, from [REDACTED] of Lynwood, California, who indicated that the applicant resided at his Lynwood residence at [REDACTED] from January 1984 to March 1985.

On December 7, 2004, the director issued a Notice of Intent to Deny, which advised the applicant that the affidavits submitted did not contain sufficient information and corroborative documents and, therefore, lacked probative value. The applicant was also advised that her October 1982 absence from the United States had exceeded the 45-day limit for a single absence. The applicant was granted 30 days in which to submit a response. The applicant, however, did not respond to the notice.

On appeal, the applicant asserts that due to the passage of time, most of her original documents establishing her continuous residence have been destroyed or lost and all her friends have relocated to different cities and states thereby, making it difficult to obtain additional evidence. The applicant submits an affidavit from [REDACTED] and [REDACTED]

of Long Beach, California, who indicated they have known the applicant since 1981. The affiants asserted they resided in the same Long Beach neighborhood in 1981, and have visited each other on a regular basis since that time.

The statements of the applicant on appeal regarding the amount and sufficiency of her evidence of residence have been considered. However, the AAO does not view the affidavits discussed above as substantive enough to support a finding that the applicant entered and began residing in the United States before January 1, 1982 through May 4, 1988. Specifically:

- [REDACTED] indicated that the applicant resided at his Lynwood residence at [REDACTED] from January 1984 to March 1985. However, the applicant indicated on her Form I-687 application dated September 5, 1989 to have resided at this residence from February 1984 to February 1987. In addition, the document from the Department of Social Services, listed the applicant residences from May 1984 to 1986 in Santa Ana, California.
- [REDACTED] attested to the applicant's residence in Los Angeles since March 1981. The applicant, however, did not claim any residence in Los Angeles on her Form I-687 application until February 1987.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

Given the credibility issues arising from the documentation provided by the applicant, it is determined that the applicant has not met her burden of proof.

Regarding her absence, the applicant states that she departed the United States on October 26, 1982 to get married, which took place on October 30, 1982, and that she and her husband had planned to remain in Mexico for no more than 15 days. The applicant, asserts, in part:

On or about October 15, 1982,<sup>1</sup> my husband and I were ready to come back to the United States, but unfortunately I began to feel some sickness like vomiting, nausea, my first thought was that it was related to the tension building for the U.S. border crossing. We could not depart as planned due to the increased of my sicknesses having the necessity to visit a doctors [sic] clinic. The doctor gave us the good news that I was pregnant for about two weeks and that he would not recommend me to travel as soon as possible that at least I should wait two more weeks to reach the ovum and mature enough for the baby to be safe and I would not be in danger of a miscarriage. Unfortunately at that time the tension was severe that my pregnancy got complicated forcing me to wait until about December 27, 1982 when I felt strong enough to travel to the United States reaching my destiny on or about January 5, 1983. Therefore, the reason I exceeded the 45 days period for any single exit was due to emergent reasons out of my control.

The applicant, however, has not provided any credible evidence, such a letter from the doctor who allegedly saw her in 1982, to support her assertion. Simply going on record without supporting documentary evidence is not

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<sup>1</sup> The month should be November.

sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Accordingly, the applicant's October 26, 1982 to January 5, 1983 absence exceeded the 45-day period allowable for a single absence, 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). Accordingly, 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.