



U.S. Citizenship
and Immigration
Services

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

L2

FILE: [REDACTED]
MSC 02 246 62887

Office: LOS ANGELES

Date: APR 08 2008

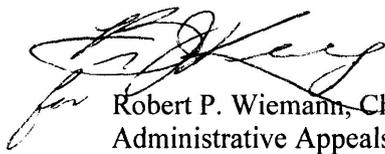
IN RE: Applicant: [REDACTED]

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.


for 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 not demonstrated that she had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, 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 additional documentation in support of her appeal.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) 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.

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).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she continuously resided in the United States in an unlawful status during the requisite period. Here, the applicant has failed to meet this burden.

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

- An affidavit notarized March 31, 1994, from [REDACTED] of Laguna Hills, California, who attested to the applicant's Los Angeles residence from March 1982 to February 1988. The affiant asserted she met the applicant through a friend for whom the applicant was employed during 1991.
- An affidavit notarized March 31, 1994, from [REDACTED] of Sherman Oaks, California, who attested to the applicant's Los Angeles residence from January 1986 to February 1988. The affiant asserted that she has maintained a friendship with the applicant since that time.
- A letter dated March 1, 1994, from [REDACTED] of North Hollywood, California, who indicated that the applicant was in her employ as a live-in housekeeper from January 1986 to June 1988.
- An affidavit notarized February 10, 1994, from [REDACTED], who indicated that the applicant was in her employ as a live-in babysitter from December 1981 through December 1985.
- Photographs the applicant claimed were taken during the requisite period.

In response to a Notice of Intent to Deny issued on February 13, 2006, the applicant submitted a declaration, stating she arrived in Los Angeles Ca. in November 1981 and "[u]pon my arrival I lived with [REDACTED] a [REDACTED] until 1985. During my stay with [REDACTED] I worked for her as a babysitter and in her personal business. After 1985 I went on to work with other families as a nanny and housekeeper."

In response to the Notice of Intent to Deny and on appeal, the applicant also submitted:

- A notarized affidavit from [REDACTED] of Gardena, California, who indicated she met the applicant in 1983 at the Holy Family Church. The affiant asserted that the applicant has visited her residence on several occasions and she has maintained a close relationship with the applicant since that time.
- A notarized affidavit from [REDACTED] of Glendale, California, who indicated he met the applicant on his birthday, January 28, 1983. The affiant asserted that through the years "I have seen her from time to time."
- An additional affidavit from [REDACTED], who attested to the applicant's residence in her home from November 1981 to December 1985. The affiant asserted that the applicant helped in raising her child and assisted in her business that she had started. The affiant asserted that she has remained good friends with the applicant since she moved from her residence in 1985. The affiant provided a copy of her child's March 6, 1982, birth certificate, her business certificate issued on September 21, 1981, and a letter from Southern California Gas Company reflecting

services to her Los Angeles residence, [REDACTED], from November 2, 1977 to October 31, 1995.

Citizenship and Immigration Services (CIS) has determined that affidavits from third party individuals may be considered as evidence of continuous residence. *See Matter of E-- M--*, *supra*. In ascertaining the evidentiary weight of such affidavits, CIS must determine the basis for the affiant's knowledge of the information to which he/she is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E-- M--*, *supra*, the affidavits would not necessarily be fatal to the applicant's claim, if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony provided. The statements issued by the applicant have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant continuously resided in the United States during the requisite period as she has presented inconsistent and contradictory documents, which undermines her credibility. Specifically:

1. [REDACTED] cannot attest to the applicant's residence during the requisite period as she claimed to have met the applicant through a friend in 1991.
2. [REDACTED] in her affidavit, indicated that the applicant was a live-in housekeeper from January 1986 to June 1988. However, the applicant did not claim on her Form I-687 application to have resided at the address of [REDACTED] during this period.
3. [REDACTED] in her affidavit, indicated that the applicant resided in her home from November 1981 to December 1985. The applicant, however, did not claim on her Form I-687 application to have resided at the address of [REDACTED] during the period in question.
4. The photographs have no identifying evidence that could be extracted which would serve to either prove or imply that they were taken in the United States and during the requisite period.

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. The applicant has not established, by a preponderance of the evidence, that she entered the United States before January 1, 1982, and resided in this country in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

Finally, it is noted that on February 4, 2003, the applicant was convicted of violating section 23103 VC, reckless driving in Case no. [REDACTED]. While this conviction does not render the applicant ineligible pursuant to 8 C.F.R. §§ 245a.11(d)(1) and 18(a), the AAO notes that the applicant does has a misdemeanor conviction.

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