

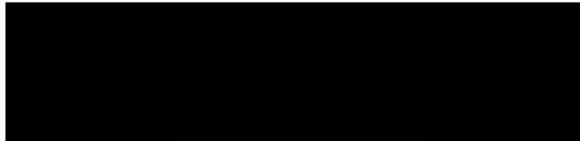


U.S. Citizenship
and Immigration
Services

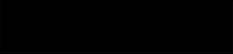
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invasion of personal privacy**

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FILE:



Office: NEW YORK

Date:

AUG 04 2008

MSC 02 155 62091

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. The file has been returned to the National Benefits Center. 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, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant had not established 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. This decision was based on the district director's determination that the applicant had exceeded the forty-five (45) day limit for a single absence from the United States during this period, as set forth in 8 C.F.R. § 245a.15(c)(1)(i).

On appeal, the applicant states that her absences were due to family emergencies. The applicant does not submit additional evidence on 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 (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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 regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

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. The applicant submitted tax returns, earnings statements, and other documents as evidence to support her Form I-485 application. Here, the submitted evidence is not relevant, probative, and credible.

In the Notice of Intent to Deny (NOID), dated February 24, 2006, the director stated that the applicant failed to submit sufficient evidence demonstrating that she entered the United States before January 1, 1982, and her continuous unlawful residence and her physical presence in the United States, during the requisite period. The director noted that the applicant testified at her interview on May 12, 2004, that she was absent from the United States from May 1982 to January 1983, for eight months, and from May 1984 to January 1986 for about twenty months. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated April 1, 2006 the director denied the instant application based on the reasons stated in the NOID. The director noted that the applicant responded to the NOID and submitted additional evidence in the form of her birth certificate with an English translation, her marriage certificate, and tax returns for the years 1992 to 2004, but failed to address the issue of her absences raised in the NOID and failed to submit documentation pertaining to her absences.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish that before October 1, 2000, he or she filed a written claim with the Attorney General for class membership in one of the following legalization class-action lawsuits: *Catholic Social Services, Inc. v. Meese*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) ("CSS"), *League of United Latin American Citizens v. INS*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) ("LULAC"), or *Zambrano v. INS*, vacated sub nom. *Immigration and Naturalization Service v. Zambrano*, 509 U.S. 918 (1993) ("Zambrano"). See section 1104(b) of the LIFE Act and 8 C.F.R. § 245a.10.

The regulations provide an illustrative list of documents that an applicant may submit to establish that he or she filed a written claim for class membership before October 1, 2000. Those regulations also permit the submission of "[a]ny other relevant document(s)." See 8 C.F.R. § 245a.14.

To be eligible for adjustment to permanent resident status under the LIFE Act, however, the applicant must also establish her continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and her continuous physical presence in the United States from November 6, 1986 through May 4, 1988. The pertinent statutory provisions read as follows:

Section 1104(c)(2)(B)(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.

“Continuous unlawful residence” is defined at 8 C.F.R. § 245a.15(c)(1), as follows: An alien shall be regarded as having resided continuously in the United States if 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.

The director’s determination that the applicant had exceeded the forty-five (45) day limit for a single absence from the United States was based on the applicant’s interview on May 12, 2004, with an officer of Citizenship and Immigration Services (CIS), wherein she stated that she had been absent from the United States from May 1982 to January 1983, for eight months, and from May 1984 to January 1986 for about twenty months. The applicant does not dispute these absences, on appeal. Instead, the applicant claims that the absences were due to family emergencies. However, the applicant does not provide any documentation whatsoever to support the claimed family emergencies. Without documentary evidence to support the claim, the applicant’s assertions will not satisfy the applicant’s burden of proof. Based on the record, by the applicant’s own testimony, she was outside the United States beyond the period of time allowed by regulation.

In the absence of additional evidence from the applicant, it is determined that the absences from May 1982 to January 1983, for eight months, and from May 1984 to January 1986 for about twenty months exceeded the 45 day period allowable for a single absence, and the 180 day aggregate of all absences. The record of proceedings does not indicate that any of the applicant’s prolonged absences from the U.S. were 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.”

Contrary to applicant's assertion, she has failed to submit any independent, corroborative, contemporaneous evidence to rebut the content and substance of the statement she provided at her interview on May 12, 2004 to the Service. The applicant has failed to provide a valid reason that necessitated a single absence from the United States beyond 45 days and a 180 day aggregate of all absences. In the absence of evidence that the applicant intended to return within 45 days, it cannot be concluded that an emergent reason "which came suddenly into being" delayed or prevented the applicant's return to the United States beyond the 45-day period.

In addition, the record is devoid of documentation to establish the applicant's continuous residence during the requisite period. The evidence submitted is not relevant or probative. The evidence submitted consists of the applicant's birth certificate with an English translation, her marriage certificate, and tax returns and earnings statements for the years 1992 to 2004. The applicant failed to submit evidence which pertains to the requisite period. Therefore, the applicant cannot establish that she resided in the United States in an unlawful status since January 1, 1982 through May 4, 1988.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, he 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.