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U.S. Citizenship  
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FILE:

MSC 02 117 63068

Office: SAN FRANCISCO

Date: JAN 23 2008

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. 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, San Francisco, 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 failed to demonstrate that she had continuously resided in the United States in an unlawful status from since before January 1, 1982, through May 4, 1988.

On appeal, counsel contends that the applicant was not allowed to have an interpreter, thus leading to confusion about the applicant's absences from the United States during the requisite period. Counsel maintains that the applicant has resided in the United States in a continuous unlawful status since before January 1, 1982, through May 4, 1988.

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.

“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.

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 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 established continuous unlawful residence prior to January 1, 1982, through May 4, 1988.

In the January 15, 2004, Notice of Intent to Deny (NOID), the director stated that the evidence submitted by the applicant failed to establish her continuous unlawful presence in the United States from before January 1, 1982, through May 4, 1988. The director determined that the applicant was absence from the United States for a year and a half from 1982 to May 1984; and therefore, ineligible under 8 C.F.R. § 245a.15(c)(1).

On appeal, counsel asserts that the Notice of Decision “does not make sense” as it states that the applicant “left the U.S. in 1982 for a year and a half in May of 1984, returning with a Border Crossing Card issued in December of 1983 from a trip to Tijuana, Mexico.” Counsel contends that the applicant was not allowed the use of an interpreter, thus leading to confusion about the applicant’s absences from the United States during the requisite period.

The record reflects that during her interview, dated May 7, 2002, the applicant stated that she first entered the United States in February 1981 and remained until December 1982. She further stated that she first departed the United States in December 1982 to work in Tijuana and returned in May 1984. The applicant stated that she entered with a Border Crossing Card. The record contains a copy of a Border Crossing Card with the applicant’s name, issued in 1983 according to the Service’s records.

The record also reflects a letter from the applicant dated March 29, 2004. In response to the Service’s request to list all absences from the United States since January 1, 1982, The applicant stated that she left the United States twice. The first departure was in December 1982. She went to Tijuana, Mexico, in an attempt to obtain a local passport. She stated that she returned to the United States on May 4, 1984. She left the United States a second time in May 1995.

In contrast, in a declaration submitted on appeal, dated April 19, 2005, the applicant stated that she left the United States in December 1983 to Mexico, and returned in April 1984. The applicant also

submitted subscribed and sworn declarations from [REDACTED] and [REDACTED], both dated April 20, 2005. They stated that the applicant went to Mexico at the end of 1983, stayed there for only a few months, and returned to the United States in early 1984.

The applicant also submitted a subscribed and sworn declaration from [REDACTED], her brother, dated April 20, 2005. The affiant stated that the applicant left for a visit to Mexico for only a few months. The affiant failed to provide any specific dates regarding her departure, length of absence, or return to the United States.

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). Here, there record contains no explanation for these inconsistencies. Based on the contradictory statements from the applicant herself and the affiants, these affidavits cannot be considered credible evidence of the applicant's continuous unlawful residence for the duration of the requisite period.

It is evident that the applicant has not only contradicted her own statements, but that of her affiants. In one instance the applicant stated that she first departed the United States in December 1982 and returned in May 1984, an absence of over 487 days. After her application was denied, she stated that she first departed the United States in December 1983 and returned in April 1984, an absence of over 92 days.

Furthermore, regardless of whether the applicant was absent from the United States for over 92 days or 487 days, she has exceeded the single absence of 45 days permitted under 8 C.F.R. § 245a.15(c)(1). There is no evidence in the record to establish she could not accomplish her return to the United States within the time period allowed due to emergent reasons. Thus, the applicant has failed to establish continuous unlawful residence during the requisite period.

Based on the above, the applicant has failed to establish continuous residence in an unlawful status in the United States from before January 1, 1982, through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. 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.