

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY

L2

FILE:

MSC 03 242 60523

Office: NEW YORK

Date:

JAN 31 2008

IN RE:

Applicant:

PETITION:

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 PETITIONER:

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, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 applicant submitted insufficient evidence to credibly document her continuous residence in an unlawful status since before January 1, 1982 to May 4, 1988 and her continuous physical presence in the United States from November 6, 1986 to May 4, 1988. Specifically, the district director found that the applicant's sworn statement in her interview on January 25, 2005 contradicted previous claims regarding her trip outside of the country during the relevant period. Consequently, the district director issued a Notice of Intent to Deny (NOID) the application on January 28, 2005, and afforded the applicant 30 days in which to submit credible evidence to show that she had continuously resided in the United States since before January 1, 1982 and May 4, 1988. The applicant's response failed to overcome the director's findings, and consequently the application was denied on May 26, 2005.

On appeal, counsel for the applicant alleges that the applicant's statement given in her interview was incorrect, and that her trip in fact was for emergent reasons which precluded her from returning to the United States within the prescribed forty-five days. On appeal, counsel submits affidavits from the applicant and the applicant's husband, as well as from a travel agency based in Colombia to verify her departure from the United States.

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).

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).

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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish her continuous unlawful residence and continuous physical presence in the United States for the requisite periods. Here, the submitted evidence initially reviewed by the director consisted of the following:

- (1) Applicant's statements on Form I-687, Applicant for Status as a Temporary Resident, which she signed under penalty of perjury on January 17, 1990. On this form, the applicant claimed that she departed the United States for Colombia in November 1985 for a family emergency and returned in January 1986.
- (2) Applicant's affidavit dated February 23, 1990, in which she claims that she departed the United States on November 30, 1985 and returned to the United States on January 1, 1986.
- (3) Applicant's statements in her January 25, 2005 interview, during which she claimed to have departed the United states in September 1985 and returned in January 1986.
- (4) Passport showing that a B-1/B-2 visa was issued to the applicant in Bogota, Colombia on November 29, 1985, and an entry stamp showing that the applicant re-entered the United States through Miami on January 27, 1986.

On January 28, 2005, the director issued the NOID. Specifically, he advised the applicant that if the statements provided were correct, the applicant would have been absent from the United States in excess of the maximum of forty-five days during this visit to Colombia. The director noted that while brief and casual absences will not disrupt continuous residency in the United States, a single absence in excess of 45 days will. The applicant was afforded thirty days to explain the inconsistency in the dates and provide additional evidence.

In a response received on April 11, 2005, counsel submitted a statement from the Social Security Institute in Ibague-Tolima, Colombia, which confirmed that the applicant's father had been hospitalized for cardiac failure from November 15, 1985 to January 11, 1986. No additional evidence was submitted.

On May 26, 2005, the director denied the application, finding that the applicant had not overcome the inconsistencies in the evidence submitted nor had she shown that her excessive absence from the United States was for emergent reasons. On appeal, counsel for the applicant alleges that the applicant was absent in excess of the required period due to her father's hospitalization, and submits affidavits in support of this contention. Based on this claim, counsel asserts that the application should be approved as the applicant has demonstrated that her return to the United States could not be accomplished in the time period allowed due to emergent reasons.

Upon review, the AAO concurs with the director's findings.

The record contains substantial inconsistencies that have not been sufficiently explained. Specifically, the record contains the following documentation:

- (1) Applicant's statements on Form I-687, Applicant for Status as a Temporary Resident, which she signed under penalty of perjury on January 17, 1990. On this form, the applicant claimed that she departed the United States for Colombia in November 1985 for a family emergency and returned in January 1986.
- (2) Applicant's affidavit dated February 23, 1990, in which she claims that she departed the United States on November 30, 1985 and returned to the United States on January 2, 1986.
- (3) Applicant's statements in her January 25, 2005 interview, during which she claimed to have departed the United States in September 1985 and returned in January 1986.
- (4) Passport showing that a B-1/B-2 visa was issued to the applicant in Bogota, Colombia on November 29, 1985, and an entry stamp showing that the applicant re-entered the United States through Miami on January 27, 1986.
- (5) Affidavit of applicant dated June 23, 2005, claiming that she departed the United States on November 18, 1985 and returned on January 27, 1986.
- (6) Affidavit of [REDACTED], applicant's husband, claiming that he met the applicant in 1986. He attests to the fact that the applicant departed the United States on November 18, 1995 and returned on January 27, 1996.¹
- (7) Affidavit dated June 13, 2005 from [REDACTED] of [REDACTED] based in Bogota, Colombia, claiming that the applicant came to their office in 1985 to request a ticket, dated November 18, from New York to Bogota.

The AAO notes that the applicant provides, in total, 3 different dates for her alleged departure from the United States: September 1985; November 18, 1985 and November 30, 1985. Regarding her return dates, it is apparent from the entry stamp in her passport that she returned on January 27, 1986; however, she claims in her February 23, 1990 affidavit that she returned to the United States on January 2, 1986.

The troubling issue regarding these inconsistencies is the fact that all statements in question were provided under oath and under the penalty of perjury. While a minor error with regard to recalling specific dates from years past is not deemed uncommon or fatal to an application, the continued inconsistencies and conflicting

¹ It is noted that both the applicant's husband and counsel on appeal refer to the dates as "1995" and "1996," not "1985" and "1986."

testimony can not be overlooked. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

While counsel claims that the applicant was unaware that she would have to provide specific details of her trip during her January 25, 2005 interview, and therefore made a mistake in claiming that she departed in September 1985, this explanation alone will not overcome the basis for the director's objections. Despite the medical statement regarding her father's hospitalization submitted in response to the NOID, the director noted that this document alone was insufficient to show the exact date of departure from the United States. Noting that her testimony in the interview claimed that she departed in September of 1985 but that her father was not hospitalized until November 15, 198, the director concluded that her absence in excess of 45 days could not have been hindered by a family emergency since there was no emergency at the time of her alleged departure.

On appeal, counsel seeks to overcome this finding by providing three affidavits, all of which claim the applicant departed the United States on November 18, 1985. First, the applicant's own affidavit claims she received a phone call from her family on November 15, and flew to Colombia on November 18. Her husband's affidavit attests to the wrong dates (i.e., 1995 and 1996 as opposed to 1985 and 1986), and further omits to explain how he had knowledge of his wife's departure for Colombia in November 1985 when he claims in the same affidavit that he did not meet her until 1986. Finally, the statement from the applicant's alleged travel agency is questionable. Specifically, the affidavit of the general manager claims that the applicant's sister came to the agency to request a ticket for the applicant dated November 18, 1985 from New York to Colombia. The affidavit makes no reference to how this information was obtained, and provides no official records, ticket receipts, booking references, etc. It is questionable how an agency can verify such information twenty years after the fact without providing the documentation or records upon which the claim is based. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Regardless, the applicant was absent from the United States for more than 45 days during the period from September 1985 to January 1986. While the exact date of her departure from the United States is uncertain, the fact remains that the absence exceeded the maximum time allowed. While a family emergency would generally be an accepted reason for a delayed return within the prescribed period, the fact that there are numerous inconsistencies in the record regard the date of departure renders it impossible to determine whether the applicant in fact departed on November 18 in response to her father's hospitalization or had departed the United States in September 1985 for unrelated reasons. The numerous inconsistent statements provided by the applicant under oath undermine the credibility of the application as a whole. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

According to the regulation at 8 C.F.R. § 245a.15(c)(1), no single absence from the United States can exceed forty-five days without interrupting continuous residency unless for emergent reasons, return to the United

States within the required period is prohibited. If the applicant's statement in her January 25, 2005 interview is, in fact true, she would have been absent from the United States for close to 120 days and her trip would have been initiated for non-emergent reasons. Since there is insufficient evidence to disprove the applicant's claim in the interview, and no documentary evidence to corroborate the claim on Form I-687 and again on appeal, the AAO must conclude that continuous residency during the requisite period has not been established.

Given the absence of contemporaneous documentation and unresolved inconsistencies in the record, it is concluded that the applicant has failed to establish, by a preponderance of evidence that she continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. Therefore, 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.