

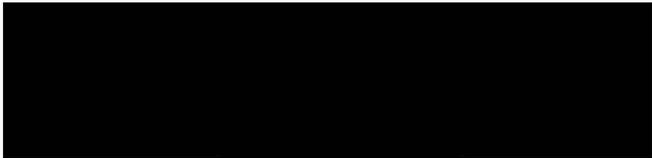
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FILE: [REDACTED]  
MSC 02 161 61747

Office: SAN FRANCISCO

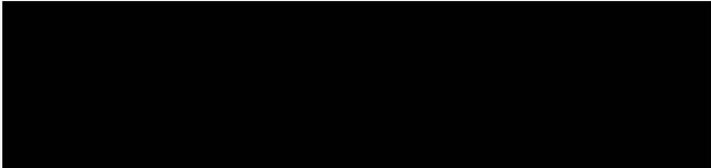
Date: JUL 11 2008

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, 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 failed to demonstrate that she entered the United States before January 1, 1982, and resided in a continuous unlawful status since then through May 4, 1988.

On appeal, counsel for the applicant submits a brief.

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 states 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 petitioner 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 petitioner 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 or petition.

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).

On March 10, 2002, the applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

In a Notice of Intent to Deny/Request for Evidence (NOID/RFE), the district director requested the applicant to submit a list of all of her absences from the United States between January 1, 1982, and May 4, 1988. In response, the applicant stated that she had been absent from the United States on one occasion – from January 15, 1985, until February 17, 1985.

In a Notice of Decision (NOD), dated November 9, 2004, the district director denied the application. The applicant, through counsel, filed a timely appeal from that decision on December 8, 2004.

On appeal, counsel contends that the decision of the district director conflicts with Ninth Circuit law. Counsel cites *Vera-Villegas v. INS*, 330 F.3d 1222 (9<sup>th</sup> Cir. 2003) as holding that absent a finding of lack of credibility or internal inconsistency, credible testimony and/or written declarations are sufficient to establish eligibility for adjustment of status to permanent residence under the LIFE Act.

In a second Notice of Intent to Deny (NOID), dated December 26, 2006, the district director granted the applicant thirty (30) days to submit evidence of her entry into the United States before January 1, 1982, and evidence of her unlawful status and continuous residence in the United States from January 1, 1982, through May 4, 1988. In response, counsel for the applicant submitted a declaration from the applicant and the results of a polygraph examination.

In a second NOD, dated February 1, 2007, the district director again denied the application. The district director incorrectly stated in her decision that the applicant had failed to respond to the NOID of December 26, 2006. However, the record reflects that counsel had, in fact, submitted a brief in response on January 22, 2007.

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 from before January 1, 1982, through May 4, 1988.

A review of the record reflects that the applicant has provided sufficient documentation to establish her unlawful presence in the United States from May 1984 through May 1988. However, there is insufficient evidence to establish that she continuously resided in the United States in an unlawful status before January 1, 1982, through May 1984. With regard to this time period, the applicant has submitted the following documentation throughout the application process:

1. A photocopy of a generic receipt from Thrift City in Redwood City, with a handwritten date of February 18, 1982, for the purchase of one dresser.

2. An affidavit, dated February 15, 2002, from [REDACTED], of Rosy's Beauty Salon in East Palo Alto, California, stating that she met the applicant at her (Ms. [REDACTED]) cousin's wedding in December 1981, and that she met her again at evening classes at Sequoia Adult School, where they really became friends. Later, after Ms. [REDACTED] became a hair stylist in 1986, the applicant and her husband became regular clients.
3. An affidavit, dated January 28, 2002, from [REDACTED] stating that she first encountered the applicant in 1981 while working in a "deli shop" in which the applicant was a regular customer and they "shared dreams of becoming part of the U.S. permanently to have a better future." Ms. [REDACTED] states that she lost touch with the applicant in 1987 after having moved.
4. The results of a polygraph examination of the applicant, performed by a certified polygraphist on January 5, 2007, showing that the applicant responded in the affirmative to two relevant test questions: "Have you lived in the United States since 1981?"; and "Other than a brief visit to Mexico in 1985, have you lived consistently in the United States since 1981?." She also responded in the negative to the relevant test question: "Have you fabricated any facts regarding your application to remain in the United States?" The polygraphist concluded that, in his opinion, the applicant responded truthfully to all relevant test questions.

No. 1, above, does not indicate to whom the item was sold or have the signature of the person who received the merchandise. While not required, the affidavits noted in Nos. 2 and 3 are not accompanied by proof of identification or any evidence that the affiants actually resided in the United States during the relevant period. The affiants are vague as to where they actually met the applicant, how often and under what circumstances they had contact with the applicant during the requisite period, and lack details that would lend credibility to their claims of alleged 21-year relationships with the applicant. As such, they can be afforded minimal weight as evidence of the applicant's residence and presence in the United States for the requisite period.

It is noted that the applicant indicated on a Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act), submitted in or about December 1989, that she had entered the United States without inspection in April 1982; had two children, one of whom ([REDACTED]) was born in Mexico on October 5, 1980, and the other ([REDACTED]) who was born in the United States on January 23, 1985; and had never departed the United States. On her Form I-485, the applicant indicated that "[REDACTED]," born on January 23, 1985, was born in Mexico.

The discrepancies in the applicant's submissions have not been explained. 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). Doubt cast on any aspect of the applicant'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. *Id.*

In summary, the applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), and no hospital or medical records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv). The applicant also has not provided documentation (including, for example, money order receipts, passport entries, children's birth certificates, bank book transactions, letters of correspondence, a Social Security card, or automobile, contract, and insurance documentation) according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (I) and (K). The documentation provided by the applicant consists solely of a generic receipt, two third-party affidavits ("other relevant documentation"), and the results of a polygraph examination. Although counsel asserts that, in an administrative context, the results of the polygraph examination must have some persuasive authority, such tests are not necessarily reliable evidence, especially in light of the various insufficiencies and inconsistencies noted in the record.

Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Here, the AAO determines that the applicant has not met her burden of proof. It is concluded that the applicant has failed to establish, by a preponderance of the evidence, that she continuously resided in the United States in unlawful status 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.