

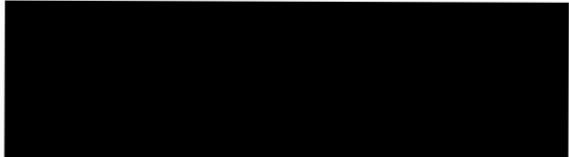
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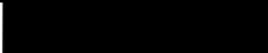
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**U.S. Citizenship  
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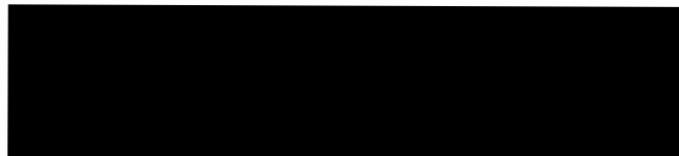


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Office: LOS ANGELES

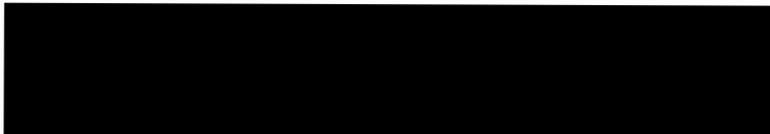
Date: **JUN 23 2008**

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, 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 failed to demonstrate by a preponderance of the evidence that she entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988. The director also found that the applicant failed to prove by a preponderance of the evidence that she was admissible to the United States. Specifically, the director found that the applicant was likely to become a public charge as defined in 8 CFR §245a.18(c)(2)(vi). Finally, the director found that the applicant failed to submit documentation showing the outcome of her arrest on September 5, 1986.

On appeal, counsel asserts that the applicant has met her burden of proof with respect to continuous unlawful residence and that the applicant provided “substantial evidence” that she will not become a public charge. In addition, counsel provided copies of previously submitted evidence with respect to the applicant’s criminal record.

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,” then 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.

The first issue in this proceeding is whether the applicant established 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. In the Notice of Intent to Deny (NOID), dated August 17, 2006, the director stated that the applicant failed to submit evidence demonstrating her continuous unlawful residence in the United States during the requisite period. The director stated that there were inconsistencies in the record that called into question the credibility of the applicant’s case. The director cited as an example a copy of the birth certificate for the applicant’s daughter that “appeared to be altered.” On appeal, counsel disputes this and requests that the Service take steps to confirm that the copy submitted by the applicant was not altered. However, it does not appear that this is necessary. The applicant has submitted a certified copy of the birth certificate that “appeared to be altered.” She has also submitted certified copies of the birth certificates of two other U.S.—born children. The authenticity of these certified copies has not been questioned and, in her final decision, the director acknowledged that the applicant had proven that she had three children born in the United States. Still, the director found that the applicant had failed to show by a preponderance of the evidence that she had resided continuously in the United States throughout the requisite period.

On appeal, counsel asserts that the birth of the applicant’s daughter in San Bernardino, California on June 3, 1981 “in and of itself establishes that Applicant had entered the U.S. Prior to 1982 as required for LIFE adjustment.” However, as stated above, an applicant for adjustment under the LIFE act must show that he or she “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.” It is not sufficient for the applicant to show entry into the United States prior to 1982, she must also show, by a preponderance of the evidence, that she resided continuously in the United States throughout the requisite period. The applicant has failed to meet her burden of proof.

The applicant has submitted the following documents to prove her continuous unlawful residence throughout the requisite period:

- Birth certificate of [REDACTED] issued by the State of California Department of Health Services. [REDACTED] was born on June 3, 1981 in San Bernardino, California to [REDACTED] and the applicant, [REDACTED].
- Birth certificate of [REDACTED] issued by the State of California Department of Health Services. [REDACTED] was born on August 20, 1983 in San Bernardino, California to [REDACTED] and the applicant, [REDACTED].

- Birth certificate of [REDACTED] issued by the State of California Department of Health Services. [REDACTED] was born on January 1, 1986 in San Bernardino, California to [REDACTED] and the applicant, [REDACTED].
- Photocopy of an envelope purportedly sent to the applicant in 1982. The postmark on the envelope is illegible. That being the case, the photocopy of the envelope has minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- Copy of a "Notification of Intended Action and Right to Request a Fair Hearing" indicating that the applicant was approved for a cash grant for Medi-Cal in July 1983.
- Affidavit of [REDACTED] dated April 10, 2006 in which the affiant states that she worked with the applicant from 1984 through 1987 and has had continued contact with the applicant since that time. The affidavit lacks details that would lend credibility to the affidavit. The affidavit does not indicate how the affiant met the applicant, nor does it describe her relationship with the applicant in any detail. This affidavit therefore has minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- Copy of California Identification Card issued to the applicant on January 22, 1987.
- Copies of receipts for rent checks dated August 16, 1984, September 12, 1984, December 5, 1985, December 14, 1985, April 1, 1986, November 9, 1987, and February 5, 1988.
- Copies of notices from utility companies bearing the applicant's name and dated April 21, 1987 and March 3, 1988.
- Several Medi-Cal receipts dated December 1985, May 1986, December 1986, October 1987, August 1988, November 1990, December 1990, February 1991, and March 1991. These receipts list the names of the applicant's U.S.-born children, [REDACTED] and [REDACTED]. The applicant's name does not appear on these documents. In addition, the receipt for December 1986 lists the address for [REDACTED] as 4 [REDACTED] [REDACTED], Ontario, CA 91762. This is different than what the applicant has listed as her address at the time. The applicant has listed her address during December 1986 as [REDACTED] [REDACTED] Cucamonga, CA. The facts that the applicant's name does not appear on the document, and that there is a discrepancy between the address provided by the applicant and that on the receipt detract from the probative value of these documents.

Finally, the record also includes copies of receipts that fall outside the requisite period and, therefore, are not probative of the applicant's claim to have resided in the United States continuously throughout the requisite period. Specifically, the applicant submitted a copy of a receipt from A-Wahl's Building Materials and Lumber dated June 20, 1989 and a Western Union receipt dated October 20, 1990.

The documentation submitted by the applicant is not sufficient to prove that she resided in the United States continuously throughout the requisite period. The fact that the applicant has U.S.-born children is not, by itself, sufficient to establish the applicant's continuous unlawful residence in the United States throughout the requisite period. The applicant has submitted one affidavit in support of her application and, as noted above, this affidavit has little probative value. Although the applicant has provided some contemporaneous evidence covering the years 1983 to 1988, this evidence is insufficient to prove her continuous residence throughout the requisite period.

In addition, although not noted by the director in her decision, the record contains evidence that the applicant was absent from the United States from October 16, 1982 until December 20, 1982, a period of 65 days. Continuous unlawful residence is broken if an absence from the United States is more than 45 days on any one trip unless return could not be accomplished due to emergent reasons. 8 C.F.R. § 245a.2(h)(1)(i). "Emergent reasons" has been defined as "coming unexpectedly into being." *Matter of C*, 19 I&N Dec. 808 (Comm. 1988). The applicant's admitted absence from the United States from October 16, 1982 until December 20, 1982, a period of more than 45 days, is clearly a break in any period of continuous residence she may have established. As the applicant has not provided any evidence that her return to the United States could not be accomplished due to "emergent reasons," she has failed to establish by a preponderance of the evidence that she has continuously resided in an unlawful status in the United States for the requisite period, as required by the LIFE Act.

Also at issue in this proceeding is whether the applicant is likely to become a public charge. An applicant for LIFE legalization must establish that she is not ineligible for admission under one or more of the categories listed in section 212(a) of the Immigration and Nationality Act. 8 U.S.C. §1182(a). Among the categories of inadmissible aliens are those likely to become a public charge. If a LIFE Act applicant is determined to be inadmissible under section 212(a)(4) of the Act, he or she may still be admissible under the Special Rule described under paragraph (d)(3) of this section. See 8 C.F.R. § 245a.18(c)(2)(iv). The director found that the applicant failed to submit requested documentation verifying how long she received welfare and how much she received. As a result, the director found that the applicant failed to establish that she was not "likely to become a public charge as defined in 8 CFR 245a.18(c)(2)(vi)."

The regulations at 8 C.F.R. § 245a.18(d)(1), 8 C.F.R. § 245a.18(d)(2), and 8 C.F.R. § 245a.18(d)(3) provide the factors to be considered in determining whether an applicant is likely to become a public charge and whether the special rule applies.

- (1) In determining whether an alien is "likely to become a public charge," financial responsibility of the alien is to be established by examining the totality of the alien's circumstance at the time of his or her application for adjustment. The existence or absence of a particular factor should never be the sole criteria for determining if an alien is likely to become a public charge. The determination of financial responsibility should be a prospective evaluation based on the alien's age, health, family status, assets, resources, education and skills.

(2) An alien who has a consistent employment history which shows the ability to support himself or herself even though his or her income may be below the poverty level is not excludable under paragraph (c)(2)(vi) of this section. The alien's employment history need not be continuous in that it is uninterrupted. In applying the Special Rule, the Service will take into account an alien's employment history in the United States to include, but not be limited to, employment prior to and immediately following the enactment of IRCA on November 6, 1986. However, the Service will take into account that an alien may not have consistent employment history due to the fact that an eligible alien was in an unlawful status and was not authorized to work. Past acceptance of public cash assistance within a history of consistent employment will enter into this decision. The weight given in considering applicability of the public charge provisions will depend on many factors, but the length of time an applicant has received public cash assistance will constitute a significant factor. It is not necessary to file a waiver in order to apply the Special Rule for determination of public charge.

(3) In order to establish that an alien is not inadmissible under paragraph (c)(2)(vi) of this section, an alien may file as much evidence available to him or her establishing that the alien is not likely to become a public charge. An alien may have filed on his or her behalf a Form I-134, Affidavit of Support. The failure to submit Form I-134 shall not constitute an adverse factor.

The burden is on the applicant to establish that she is not likely to become a public charge. The applicant testified before an immigration officer that she received public assistance in the United States for two years. In her statement submitted on September 15, 2006 the applicant acknowledged receiving public assistance and stated “[i]t was hard for me to find a steady job.” The applicant has not submitted evidence to establish that she is not likely to become a public charge such as proof of consistent employment or proof of assets. Thus, the applicant has not met her burden of proof.

A final issue in this proceeding is whether the applicant's criminal history renders her ineligible for adjustment under the LIFE Act. An applicant for adjustment under the LIFE Act must establish that he or she is admissible to the United States as an immigrant. Generally, an alien is inadmissible under § 212(a) of the Immigration and Nationality Act if he or she has committed a crime involving moral turpitude. 8 U.S.C. § 1182(a)(2)(A)(i)(I). There is a “petty offense” exception to this ground of inadmissibility if the maximum possible penalty for the crime of which the alien was convicted did not exceed one year and the alien was not sentenced to a term of imprisonment of more than six months. However, any alien who has been convicted of two or more offenses for which the **aggregate sentences were more than five years is inadmissible.** 8 U.S.C. § 1182(a)(2)(B). In addition, an applicant for adjustment under the LIFE Act must establish that he or she has not been convicted of a felony or three or more misdemeanors committed in the United States. Section 1104(c)(2)(D)(ii) of the LIFE Act.

The record shows that the applicant was arrested on at least two occasions, once in 1985 and once in 1986. The 1985 arrest resulted in a conviction for petty theft, a misdemeanor, under section 488 of the California Penal Code. Petty theft is a misdemeanor which “is punishable by fine not exceeding one thousand dollars (\$1,000), or by imprisonment in the county jail not exceeding six months, or both.” Cal. Pen. Code § 490. The applicant was sentenced to five days in jail for this conviction. Even assuming petty theft is a crime involving moral turpitude, it falls under the “petty offense” exception and thus does not render the applicant inadmissible.

However, as noted by the director, the applicant failed to submit documentation showing the outcome of her arrest on September 5, 1986. The applicant submitted a Criminal History Transcript from the California Department of Justice. This one-page document lists an arrest on August 12, 1985 followed by a conviction for petty theft on August 15, 1985. It also lists an arrest on September 5, 1986 in Glendora, California for burglary under section 459 of the California Penal Code and for Receipt of Stolen Property. The disposition of the September 5, 1986 arrest is not listed. The applicant has also submitted the following:

- A copy of a “Certificate of Search” from Los Angeles County Superior Court stating that no adult felony/misdemeanor record was found for [REDACTED] for the Superior Court of California, County of Los Angeles, East District, West Covina Courthouse;
- A copy of a letter from the Deputy Clerk of the San Bernardino County Superior Court which states “The information you have requested is no longer available. It has been determined that the file(s) have been destroyed pursuant to government code 68152 (Et. Seq).”

An applicant for adjustment under the LIFE Act has the burden of establishing that he or she is eligible for the benefit sought. The non-existence or unavailability of required evidence creates a presumption on ineligibility. 8 C.F.R. § 103.2(b)(2)(i). If an applicant can establish that a required document does not exist or cannot be obtained, he or she must submit secondary evidence pertinent to the facts at issue. If the applicant can establish that secondary evidence is not available, then he or she must submit at least two affidavits from persons who have direct knowledge of the event and circumstances. In order to establish that a record is not available an applicant must submit an original written statement on government letterhead which indicates the reason the record does not exist and indicates whether similar records for the time and place are available.

The applicant has not established that records relating to her arrest are unavailable. The “Certificate of Search” from the Los Angeles County Superior Court—the county in which the September 1986 arrest occurred—fails to comply with the regulations in that it does not indicate the reason the record of arrest does not exist and does not indicate whether similar records for the time and place are available. Further, the applicant has failed to provide any secondary evidence or affidavits regarding the disposition of her arrest.

The applicant has the burden of proving that she is admissible to the United States as an immigrant and that she is eligible for adjustment of status under the LIFE Act. In failing to prove the disposition of her arrest of September 5, 1986, the applicant has failed to meet her burden of proof.

In summary, 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. The applicant has also failed to establish that she is admissible to the United States as an immigrant, and that she has not been convicted of a felony. 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.