

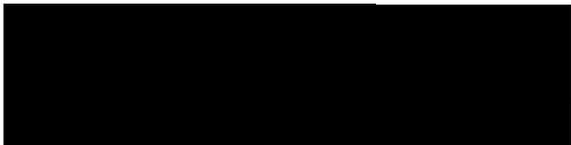
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC 02 245 60063

Office: NEW YORK

Date: **MAY 22 2008**

IN RE: Applicant: [REDACTED]

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to read "R. 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, New York, 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 through May 4, 1988.

On appeal, applicant contends that director wrongly denied her application on the grounds that she failed to respond to the Notice of Intent to Deny (NOID) within 30 days. The applicant asserts that she did submit additional evidence within the 30 days and attaches proof that the evidence was mailed on August 19, 2006, by certified return receipt. The receipt indicates that the evidence was delivered and signed for on August 22, 2006, 29 days after the NOID.

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.

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.” The applicant has not submitted any evidence to establish that an emergent reason delayed her return to 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).

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).

In the NOID, dated on July 24, 2006, the director stated that the applicant failed to submit evidence demonstrating her entry into the United States before January 1, 1982, and her continuous unlawful residence in the United States during the requisite period. The director granted the applicant thirty (30) days to submit additional evidence. In the Notice of Decision, dated September 11, 2006, the director denied the instant applicant based on the reasons stated in the NOID. The director stated that the applicant failed to provide any additional evidence in response to the NOID. On appeal, applicant provides proof of her reply, but she failed to provide any copies the actual evidence mailed to the director in support of her claim. Therefore, the record will be considered complete.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she entered the United States before January 1, 1982, and continuously resided in an unlawful status in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record contains the applicant’s Affidavit for Determination of Class Membership in *League of United Latin American Citizens v. INS (LULAC)*, dated on April 11, 1990. In her affidavit, the applicant stated that she first entered the United States in November 1981. To meet her burden of proof, an applicant must provide evidence of eligibility apart from her own testimony. 8 C.F.R. § 245a.2(d)(6). The record does not contain any other independent evidence to establish the applicant’s claimed entry into the United States in November 1981.

In support of her claim of continuous unlawful residence in the United States from January 1, 1982, through May 4, 1998, the record contains a declaration by [REDACTED], personal banker at Bank South, dated on April 10, 1990. The declarant stated that the applicant maintained an account at the bank. The declarant provided her business address and telephone number. The declaration failed to

include any dates of when the applicant maintained her account at the bank. The declaration provides no probative value.

The record also contains a copy of a receipt, dated October 23, 1986. The receipt is in the applicant's name for \$180.00 from the Spanish-American Institute, Inc. The receipt does not contain any information regarding the applicant's place of residence at the time. The receipt provides little probative value.

The record includes the applicant's Form I-687, Application for Temporary Resident Status pursuant to Section 245A of the Immigration and Nationality Act, signed by the applicant on April 10, 1990. In her Form I-687, at Question #35, the applicant was asked to list all absences from the United States since her entry. The applicant stated that she had three absences from the United States during the requisite period: from August 1987 to September 1987, from January 1988 to February 1988, and during May 1988.

The record includes a copy of the applicant's passport. On page 9, her passport contains a multiple entry B-2 visa issued to the applicant on September 4, 1987, in Tokyo. The record indicates that the applicant entered the United States on September 9, 1987. The applicant claimed no absence until January 1988. However, there is no evidence of the applicant's departure from the United States in January 1988. On the contrary, based on the Service's records, the applicant departed the United States on September 25, 1987, shortly after her September 9, 1987 arrival. Subsequently, the applicant entered the United States on February 20, 1988, which is confirmed by a copy of the applicant's admission card date-stamped on February 20, 1988. The applicant's passport also contains a multiple entry F-1 visa issued to the applicant on February 9, 1988, in Tokyo. There is no other evidence in the record to establish the applicant re-entered the United States prior to February 20, 1988.

The above evidence demonstrates that the applicant was absent from the United States from September 25, 1987, through February 20, 1988, a period of 148 days. The AAO finds that the applicant's absence interrupted her continuous unlawful residence during the requisite period. This single absence is in excess of forty-five (45) days between January 1, 1982, and May 4, 1988, permitted under 8 C.F.R. § 245a.15(c)(1).

While not dealt with in the director's decision, there must, nevertheless, be a further determination as to whether the applicant's prolonged absence from the United States was 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." The applicant has not submitted any evidence to establish that an emergent reason delayed her return to the United States.

The applicant has failed to demonstrate continuous unlawful residence in the United States for the duration of the requisite period. The record does not contain any independent evidence of the applicant's presence in the United States prior to 1986. Also, the applicant's absence in 1987-1988 interrupted her continuous unlawful residence. Therefore, 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, 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.