



U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

L2



FILE:

MSC 02 134 64477

Office: LOS ANGELES

Date: NOV 04 2008

IN RE:

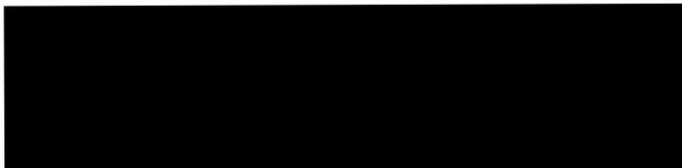
Applicant:



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. 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.

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 Director, Los Angeles, California, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The 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 from then through May 4, 1988.

On appeal, counsel for the applicant submits a brief and additional documentation.

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 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 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 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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). *See* 8 C.F.R. 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.12(f). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

The applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status, under the LIFE Act on February 11, 2002.

In a Notice of Intent to Deny (NOID), dated September 30, 2004, the director determined that the applicant had failed to demonstrate her continuous unlawful residence in the United States from prior to January 1, 1982, through May 4, 1988. The director specifically noted that the applicant's tax records for 1984 through 1987 did not contain her signature and did not appear to have been filed in the original years. The director provided the applicant 30 days in which to provide a rebuttal to the NOID. The record reflects that the applicant failed to respond.

In a Notice of Decision (NOD), November 10, 2004, the director denied the application. The applicant, through counsel, timely filed the current appeal from the director's decision on December 9, 2004.

The issue in the proceeding is whether the applicant has demonstrated, by a preponderance of the evidence, that she entered the United States before January 1, 1982, and resided in a continuous unlawful status from then through May 4, 1988.

A review of the record reflects that the applicant has provided the following documentation in an attempt to establish her unlawful continuous presence in the United States from before January 1, 1982, through May 1, 1988:

1. Fill-in-the blank affidavits, dated January 31, 1991, from (a) [REDACTED], a mechanic from Los Angeles, California, stating that he had personal knowledge that the applicant resided at [REDACTED], Los Angeles, from July 1984 to March 1986 – that they were good friends and neighbors; (b) [REDACTED] a housekeeper from Placentia, California, stating that she had personal knowledge that the applicant

resided at [REDACTED], Anaheim, California, from March 1983 to July 1984, and at [REDACTED], Placentia, California, from November 1987 to November 1990 – that [REDACTED] was her landlord and the applicant was a very good tenant who always paid on time; and (c) [REDACTED] of Cudahy, California, stating that the applicant traveled to Guatemala by car from July 2, 1987, to August 1, 1987.

2. An affidavit, dated June 1, 1994, from [REDACTED] of Los Angeles, California, stating that she employed the applicant as her housekeeper from January to August 1982, and from February 1994 until the date of signing the affidavit. Ms. [REDACTED] stated that she paid the applicant in cash for her services and therefore had no records of such payments.
3. An affidavit, dated January 16, 2001, from [REDACTED], stating that the applicant lived in his house at [REDACTED], Anaheim, California, after coming to the United States from Guatemala in November 1981. Mr. [REDACTED] does not indicate how long the applicant lived at that address.
4. An un-dated and un-notarized letter from [REDACTED] of Johnson Language Arts, Pacific Palisades, California, stating that she had known the applicant since December 1981 – that they were introduced by [REDACTED]'s previous housekeeper (“[REDACTED]”) and that the applicant had been employed by her doing part-time house cleaning every two weeks since March 1990.
5. Incomplete, unsigned photocopies of the applicant’s husband’s (showing the applicant as a dependent) Federal and California State tax forms for 1983 through 1988. As noted by the director, these documents do not contain the applicant’s signature and do not appear to have been filed in the original years. On appeal, counsel submits Internal Revenue Service (IRS) documentation indicating that the applicant’s spouse, [REDACTED] ([REDACTED]), filed income tax reports for the years 1983 through 2004.

The letters from [REDACTED] and [REDACTED] (Nos. 2 and 4, above) do not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i) as employment verification, and, as acquaintance affidavits, provide no verification of the applicant’s entry into the United States prior to January 1, 1982. With regard to her claimed entry into the United States prior to January 1, 1982, the applicant has provided two third-party statements (Nos. 3 and 4) attesting to her presence in the United States since in or after November 1981. The affiants are somewhat vague as to how they date their acquaintances with the applicant, how often and under what circumstances they had contact with the applicant throughout the requisite period, and lack details that would lend credibility to their claims of (in the case of [REDACTED]) an alleged 20-year relationship with the applicant. The affidavit from [REDACTED] is neither dated nor notarized and therefore has little evidentiary weight. The fill-in the blank affidavits provided in No. 1 are similarly vague and provide little details as to how the affiants had direct and personal knowledge of the events and circumstances of the applicant’s entry and continuous unlawful residence in the United States. As

such, these statements can be afforded only minimal weight as evidence of the applicant's residence and presence in the United States for the requisite period. Furthermore, the IRS forms in No. 5 can be given little weight as evidence of the applicant's presence and residence in the United States, as they only verify the applicant's spouse's earnings from 1983 forward.

It is noted that at the time of signing a Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act), on November 30, 1990, the applicant initially indicated that she had no children. She later amended that application to reflect the birth of her daughter "[REDACTED]" in the United States on February 26, 1991 – but added no other children. The applicant also indicated that she had entered the United States without inspection in November 1981, and had only been absent from the United States since that entry on one occasion – from July 2, 1987 to August 1, 1987, in order to visit family in Guatemala.

It is further noted that at the time of filing a Form I-589, Request for Asylum in the United States, on October 27, 1992, the applicant indicated that she had two children: [REDACTED], born in Guatemala on February 26, 1983 (who entered the United States on August 1, 1987) and [REDACTED], born in the United States on February 28, 1991. On the Form I-589, the applicant also indicated in Part D, question 24, that she had traveled to the United States three times: from December 1981 to August 1982; from December 1985 to July 1987; and from August 1987 to the date of signing the application on October 2, 1992.

Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

The discrepancies in the record regarding the applicant's claimed presence in the United States and the absence of sufficiently detailed documentation to corroborate her claim of continuous residence for the entire requisite period detracts from the credibility of her claim. 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.

It is concluded that the applicant has failed to demonstrate, by a preponderance of the evidence, that she resided in continuous 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.