

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

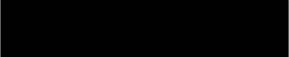


U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L2

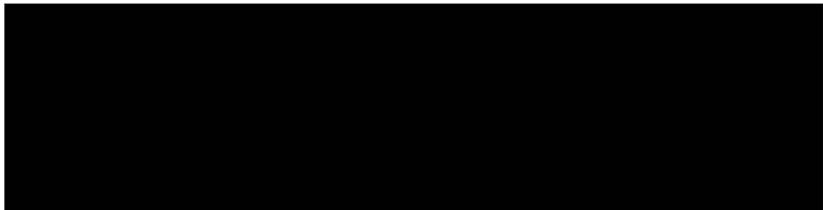


FILE: 
MSC 02 228 62815

Office: LOS ANGELES

Date: **OCT 07 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 (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant had failed to establish residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the applicant had submitted sufficient evidence to support her claim of continuous residence in the United States from prior to January 1, 1982 through May 4, 1988 to Citizenship and Immigration Services or CIS (formerly the Immigration and Naturalization Service or the Service). Counsel submits additional documentation in support of the appeal.

An applicant for permanent resident status must establish 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. Section 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b).

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 under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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 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 to May 4, 1988, the submission of any other relevant document including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(v) states that attestations by churches, unions, or other organizations to the applicant's residence by letter must: identify applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of information contained in the attestation.

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 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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to establish 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. Here, the applicant has failed to meet this burden.

The applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (Act), on February 21, 1990. At part #33 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant listed [REDACTED] in Glendale, California from January 1981 through at least the end of the requisite period on May 4, 1988. Further, at part #34 of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, businesses, etc., the applicant listed “NONE.”

In support of her claim of continuous residence in the United States since prior to January 1, 1982, the applicant submitted an affidavit that is signed [REDACTED]. Ms. [REDACTED] stated she had known the applicant for a long time and had personal knowledge that the applicant lived in Glendale, California from January 1981 to June 1986. Although [REDACTED] provided the name of the suburb in Los Angeles, California where the applicant purportedly lived from 1981 to 1986, she failed to provide any additional specific and verifiable testimony to substantiate the applicant’s claim of residence in this country for this period. Furthermore, [REDACTED] did not attest to the applicant’s residence in the United States after June 1986 through May 4, 1988.

The applicant included an affidavit signed by [REDACTED] who declared that he had personal knowledge that the applicant resided in the United States since January 1981. Mr. [REDACTED] indicated that the applicant was his niece and she had stayed with him for a few months when she first arrived in this country. While [REDACTED] attested to the applicant’s residence in this country since January 1981, he failed to provide any pertinent and detailed information to corroborate the applicant’s claim of residence in the United States for the requisite period. In addition, the probative value of [REDACTED]’s testimony is further limited as he has

acknowledged that the applicant is his niece, and therefore, must be considered a family member with an interest in the outcome of these proceedings rather than an independent witness.

Subsequently, on May 16, 2002, the applicant filed her Form I-485 LIFE Act application. With the Form I-485 LIFE Act application, the applicant provided a copy of her certificate of registry of marriage. This document reflects that the applicant obtained a marriage license in Los Angeles County, California on February 24, 1988 and was subsequently married in Glendale, California on March 20, 1988.

The applicant submitted a photocopied student identification card bearing her name for the 1983-1984 school year from the Huntington Park-Bell Community Adult School at 6020 Miles Avenue in Huntington Park, California. Nevertheless, the probative value of this document is minimal in that the document does contain the applicant's photograph and her name is handwritten on the identification card. Additionally, the applicant failed to provide any explanation as why she attended a school in Huntington Park, California if in fact she was residing approximately ten miles away in a different local school district in Glendale, California as she had testified at part #33 of the Form I-687 application.

The applicant included seven separate photocopies of purchaser's copies for money orders worth \$200.00 each that list the applicant as the payee and are dated April 2, 1984, May 2, 1984, July 2, 1984, August 5, 1984, September 5, 1984, October 4, 1984, and November 4, 1984, respectively. However, these purchaser copies list addresses in Maywood, California and Bell California as the applicant's address of residence rather than the Glendale, California address she listed as her address of residence at part #33 of the Form I-687 application. The applicant failed to advance any explanation for this discrepancy.

The applicant provided a photocopied customer receipt for a United States Postal Service (USPS) money order of \$200.00 dated December 4, 1984 and made payable to the applicant. Regardless, the probative value of this receipt is limited in that the only reference to the applicant is the handwritten notation of her name.

The applicant submitted a photocopy of her California Driver License that listed her address of residence as [REDACTED] in Burbank, California as of the date of issue on February 6, 1986. The applicant also included a Form W-2 Wage and Tax Statement for the 1986 Tax Year that listed her address of residence as [REDACTED] in Burbank, California. This address does not correspond to that address, [REDACTED] in Glendale, California, the applicant claimed was her sole address of residence in the United States for the entire requisite period at part #33 of the Form I-687 application. The applicant failed to put forth any explanation to resolve this contradiction.

The applicant provided a bill to her dated April 15, 1987 in the amount of \$40.00 for the preparation of Federal and California tax returns by [REDACTED] in Burbank, California as well as the corresponding tax returns. However, the tax returns are

unsigned and contain no indication that such returns were submitted to the appropriate tax authorities.

The applicant submitted an affidavit signed by [REDACTED] who stated that he had personal knowledge that the applicant resided at an unspecified address in Maywood, California from March 1982 to October 1984. The affiant indicated that he was a Catholic (Anglican Rite) priest and that his knowledge of the applicant's residence in the United States was based upon her membership in a youth group at church. However, the affiant failed to attest to the applicant's residence in this country from prior to January 1, 1982 up through March 1982 and after October 1984 to the end of the period in question on May 4, 1988. Furthermore, the affiant's testimony that the applicant resided in Maywood, California from March 1982 to October 1984 conflicted with the applicant's own testimony that she lived in Glendale, California before, during, and after this period at part #33 of the Form I-687 application.

The applicant included an affidavit that is signed by [REDACTED] Ms. [REDACTED] declared that the applicant and her mother resided in an unspecified property she owned in Maywood, California from February 1982 to October 1984. However, [REDACTED] failed to testify to the applicant's residence in the United States from before January 1, 1982 up to February 1982 and after October 1984 through May 4, 1988. In addition, [REDACTED] testimony that the applicant resided in Maywood, California from February 1982 to October 1984 directly contradicted the applicant's prior testimony that her sole residence during the entire period from prior to January 1982 through May 4, 1988 was in Glendale, California.

On January 20, 2004, the director issued a Form I-72, Request for Additional Information, in which the applicant was asked to provide additional documents in support of her application as well as her claim of residence in this country for the requisite period.

In response, the applicant provided a printout from the Social Security Administration reflecting that she earned income subject to Social Security withholding taxes in 1986. Regardless, the printout does not reflect that the applicant had earnings subject to such taxes in 1982, 1983, 1984, 1985, 1987, and 1988.

The applicant submitted an undated letter on the letterhead stationery of the Church of Our Lady of Guadalupe in Whittier, California that is signed by Father [REDACTED] whose position is listed as rector. This is the same individual who had previously provided a supporting affidavit with the Form I-485 LIFE Act application. In his letter, [REDACTED] noted that applicant was a member of the congregation and youth group of this church from May 10, 1982 to September 12, 1984. However, [REDACTED] failed to list the applicant's address of residence during that period she had been affiliated with the church as required by 8 C.F.R. § 245a.2(d)(3)(v). Additionally, Father Ronderos' assertion that the applicant was a member of this church during this period did not correspond to the applicant's testimony at part #34 of the Form I-687 application where the applicant listed "NONE" when asked to list all memberships,

affiliations, and associations rather than listing any membership in or affiliation with the Church of Our Lady of Guadalupe in Whittier, California.

Although the applicant also included documentation that demonstrates the residence of two affiants who had previously provided testimony in support of the applicant's claim of residence in the United States for the period in question, neither [REDACTED] nor [REDACTED] submitted any new attestations relating to the applicant's residence in this country from prior to January 1, 1982.

On August 16, 2004, the district director issued a notice of intent to deny to the applicant informing her of CIS's intent to deny her application because she failed to submit sufficient evidence of continuous unlawful residence in the United States from prior to January 1, 1982 through May 4, 1988. The applicant was granted thirty days to respond to the notice.

In response, counsel provided copies of a previously submitted document, as well as a new piece of evidence in support of the applicant's claim of residence for the requisite period. Counsel included a photocopied student identification card bearing the applicant's name for the 1981-1982 school year from the Huntington Park-Bell Community Adult School at 6020 Miles Avenue in Huntington Park, California. Just as with the school identification card from this same school for the 1983-1984 school year, the probative value of this document is minimal in that the document does contain the applicant's photograph and her name is handwritten on the identification card. Once again, the applicant failed to provide any explanation as why she attended a school in Huntington Park, California if in fact she was residing approximately ten miles away in a different local school district in Glendale, California as she had testified at part #33 of the Form I-687 application. Moreover, it must be noted that the applicant was born on December 11, 1966 and would have been only fifteen years old or high school age at the beginning of the 1981-1982 school year. The applicant offered no explanation as to why she was attending an adult school rather than a high school when she was fifteen years of age.

The district director determined that the applicant failed to submit sufficient credible evidence demonstrating her residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988, and, therefore, denied the Form I-485 LIFE Act application on September 23, 2004.

On appeal, counsel provides copies of previously submitted documents as well as one new piece of evidence. Counsel submits a letter dated October 1, 2004 containing the letterhead and seal of St. Raphael's Church in Los Angeles, California that is signed by [REDACTED] who listed his position as pastor. In his letter, [REDACTED] provided the applicant's most current address of residence as of the date of the letter and stated that she had been an active member of this parish from 1981 through 1985. [REDACTED] declared that the applicant and her mother were both involved in church activities during this period with the applicant participating as a catechist in the religious program. Although [REDACTED] asserted that the applicant was a parishioner of Saint Raphael's Church from 1981 to 1985, the applicant failed to list any

membership in this or any other church but instead listed "NONE" when asked to list all memberships, affiliations or associations at part #34 of the Form I-687 application. No explanation was put forth as to why the applicant failed to list her affiliation with Saint Raphael's Church if in fact she was an active member of the church from 1981 to 1985. In addition, Father [REDACTED] failed to list the applicant's address of residence during the entire period she had been affiliated with the church from 1981 to 1985 as required by 8 C.F.R. § 245a.2(d)(3)(v).

Counsel asserts that the applicant had submitted sufficient evidence to support her claim of continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. However, as discussed above, the supporting documentation contained in the record does not contain specific and verifiable testimony to substantiate the applicant's claim of residence in the United States for the period in question. In addition, affidavits submitted in support of the applicant's claim of residence contain testimony that contradicts the applicant's own testimony relating to critical elements of her claimed residence in this country since prior to January 1, 1982 such as her address of residence and her purported membership in two different churches during the requisite period.

The absence of sufficiently detailed supporting documentation and the conflicting nature of portions of testimony contained in such supporting documents seriously undermine the credibility of the applicant's claim of residence in this country for the requisite period, as well as the credibility of the documents submitted in support of such claim. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet her burden of proof in establishing that she has resided in the United States since prior to January 1, 1982 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.12(e) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's reliance upon documents with minimal or no probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988 as required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.