

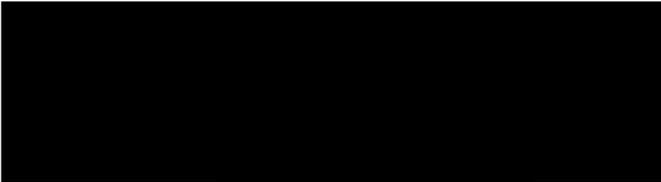
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



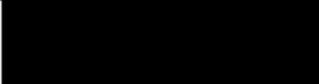
U.S. Citizenship
and Immigration
Services

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FILE:



Office: Fresno, CA

Date:

JUL 21 2009

MSC 03 210 62381

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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been forwarded to the U.S. Citizenship and Immigration Services National Records 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 if the matter was remanded for further action, the record of proceedings was returned to the office that originally issued a decision in your case, and you will be contacted.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the director, Fresno, California. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director found that the evidence which the applicant submitted to demonstrate her residence in the United States from a date prior to January 1, 1982 through May 4, 1988 was not sufficient to establish continuous residence. Thus, the director issued a request for additional evidence. The applicant failed to respond to that request. Therefore, the director denied the application.

On appeal, the applicant submitted additional evidence and asserted that the record did establish that she had resided continuously in the United States in an unlawful status throughout the entire statutory period, and that she was otherwise eligible to adjust under the LIFE Act.

The AAO maintains plenary power to review this matter on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also, Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The federal courts have long recognized the AAO’s *de novo* review authority. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted on appeal.¹

An applicant for permanent resident status under section 1104 of the LIFE Act 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 through May 4, 1988. *See* LIFE Act § 1104(c)(2)(B) 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 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 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).

The application and other statements of the applicant, both oral and written, are evidence to be considered. *See Matter of E-M-*, 20 I&N Dec. 77 at 79. The applicant’s statements must not be

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in this case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

the applicant's only evidence used to establish eligibility, but they should be viewed as valid evidence. *Id.*

The absence of contemporaneous evidence is not necessarily fatal to the applicant's claim of continuous residence in the United States during the statutory period. *See id.* at 82-83. Affidavits that are consistent and verifiable may be sufficient to demonstrate continuous residence. *See id.*

Documentary evidence may be in the format prescribed by U.S. Citizenship and Immigration Services (USCIS) regulations. *See id.* at 80. For example, 8 C.F.R. § 245a.2(d)(3)(i) states that a letter from an employer should be signed by the employer under penalty of perjury and "state the employer's willingness to come forward and give testimony if requested." *Id.* Letters from employers that do not comply with such requirements do not have to be accorded as much weight as letters that do comply. *Id.* However, even if not in compliance with this regulation, a letter from an employer should be considered as a "relevant document" under 8 C.F.R. § 245a.2(d)(3)(iv)(L). *Id.* Also, affidavits that have been properly attested to may be given more weight than a letter or statement. *Id.* Nonetheless in determining the weight of a statement, it should be examined first to determine upon what basis it was made and whether the statement is internally consistent, plausible and credible. *Id.* What is most important is whether the statement is consistent with the other evidence in the record. *Id.*

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. *Id.* at 79-80. 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.* at 80. 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 or 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 petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (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, to deny the application or petition.

On or near May 31, 1990, the applicant applied for class membership in a legalization class-action lawsuit and filed Form I-687, Application for Status as a Temporary Resident. On April 28, 2003, she filed Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

The director issued a request for evidence in which he indicated that the applicant had twelve weeks to provide the requested evidence, including evidence that the applicant had resided

continuously in the United States throughout the statutory period, and that if she failed to reply the matter would be adjudicated based on the evidence in the record. The applicant failed to reply and the director denied the application.

On appeal, the applicant submitted additional evidence and she indicated that the record did establish that she had resided continuously in the United States in an unlawful status during the statutory period and that she was otherwise eligible to adjust under the LIFE Act.

On April 15, 2009, the AAO issued a notice of intent to dismiss which stated that at issue in this proceeding is whether the applicant is able to establish that she resided continuously in the United States from some date prior to January 1, 1982 through May 4, 1988.

The AAO noted that the record includes the following adverse or inconsistent evidence regarding this point:

1. The class member application submitted on or near May 31, 1990 on which the applicant stated that her first entry into the United States was on November 29, 1981.
2. The sworn statement taken at the applicant's LIFE legalization interview which she signed on January 21, 2004 on which she and her husband stated that she first entered the United States during November 1981.
3. The affidavit of [REDACTED] in which the affiant attested that he first met the applicant in Los Angeles on September 15, 1981.
4. The affidavit of [REDACTED] dated April 12, 1990 on which the affiant attested that the applicant resided at his home in Livingston, California from March 1981 through January 1984.
5. The statement² of [REDACTED] which is also dated April 12, 1990 on which [REDACTED] stated that the applicant resided in Livingston, California from November 29, 1981 through January 5, 1984. The signature on this statement is the same as that on the affidavit summarized at number 4 above. However, the printed name of the one who wrote the statement is [REDACTED] rather than [REDACTED] as on the affidavit at number 4.

The applicant stated that she first entered the United States on November 29, 1981. However, she submitted affidavits in which one affiant attested that he met her in the United States during September 1981 and in which an affiant attested that she resided at his home in the United States from March 1981 through January 1984.

² Various entries on this document have been whited-out and replaced or otherwise modified, including the line which lists the applicant's name and the line which bears the notary's signature. Thus, this document is regarded as a statement, not as a duly notarized affidavit.

The April 2009 notice of intent to dismiss pointed out that these discrepancies cast doubt on the authenticity of all the evidence of record, including the applicant's claim that she resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988.

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

The April 2009 notice of intent to dismiss stated that such inconsistencies in the record may only be overcome through independent, objective evidence of the applicant's claim that she resided continuously in the United States throughout the statutory period, and that the record did not include such evidence.

The April 2009 notice also stated that the AAO finds that the various statements and affidavits currently in the record which attempt to substantiate the applicant's residence and employment in the United States throughout the statutory period are not objective, independent evidence such that they might overcome the inconsistencies in the record regarding the applicant's claim that she maintained continuous residence in the United States throughout the statutory period, and that these statements and affidavits are not probative.

The AAO stated that the applicant failed to establish continuous residence in an unlawful status in the United States from some date prior to January 1, 1982 and through May 4, 1988. Thus, according to the evidence in the record, she is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

The AAO stated that in order to overcome these findings, the applicant must offer independent and objective evidence from credible sources which thoroughly address and rebut the discrepancies described above.

In response, the applicant submitted evidence which includes the following: an affidavit written by _____ dated June 15, 2009 on which _____ attests that he met the applicant in Los Angeles on November 15, 1981, not September 15 1981 as indicated on the March 13, 2002 _____ affidavit submitted into the record. The AAO notes that the applicant has attested that she first entered the United States on November 29, 1981 and that it appears from the signature on this affidavit that the _____ who signed the 2009 affidavit is not the same individual as the _____ who signed the March 13, 2002 affidavit in the record.

The applicant also submitted an affidavit written by _____ on which _____ attests that the applicant began residing at his home during November 1981, not during March 1981 as was indicated on his affidavit dated April 12, 1990. _____ also indicated that his name was spelled throughout one of the April 1990 affidavits in the record because of an error made in the

spelling. [REDACTED] did not explain how he failed to notice the misspelling of his name at the time that he signed that document.

In addition, the applicant submitted the affidavit of [REDACTED] which attests that the applicant worked at his farm in Raisin City, California during December 1982-February 1983 and December 1983-February 1984. The AAO notes that according to maps available online at www.mapquest.com this farm is over 85 miles from the address in Livingston, California which the applicant listed for herself on the Form I-687 as being her home from November 29, 1981 through January 5, 1984. Also, the farm is over 200 miles from the address which she listed for herself on the Form I-687 from January 5, 1984 through September 11, 1989. That is, the record indicates that during the period from December 1983 through February 1984 while the applicant worked in Raisin City, California, on January 5, 1984, the applicant moved from an address over 85 miles away from her workplace to an address which is over 200 miles away from her workplace.

In response to the April 2009 notice of intent to dismiss, the applicant did not submit any independent, objective evidence to overcome the discrepancies set forth in that notice. Thus, the applicant has failed to establish continuous residence in the United States throughout the statutory period and she is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act. The appeal is dismissed on this basis.

Finally, the AAO notes that the record shows that the applicant was placed in removal proceedings on August 20, 1998 under A-number [REDACTED]. On May 29, 2003, the Immigration Judge (IJ) administratively closed the applicant's removal proceedings because of her pending LIFE legalization claim. The IJ rendered no removal order or other order in that matter.

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