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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
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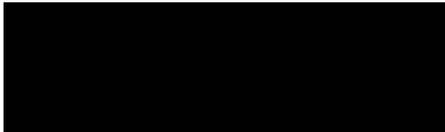
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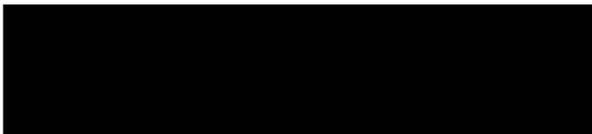
IN RE:

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.

A handwritten signature in black ink, appearing to be "Perry Rhew".

Perry Rhew
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 district director denied the application because the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988 as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, the applicant reiterates her claim of residence in this country for the required period. The applicant asserts that she applicant entered the United States in November 1981 and resided with her husband and friends in Lake Elsinore, California. The applicant contends that she traveled to Tijuana, Mexico in 1982 to obtain a border crossing and that she returned in a day or two to Lake Elsinore, California. The applicant claims that the applicant obtained the border crossing card in order to travel back and forth across the border to visit her brother in Ensenada, Mexico but that she subsequently never returned to Mexico. The applicant provides copies of previously submitted documentation in support of the appeal.

Although a Notice of Entry of Appearance as Attorney of Representative (Form G-28) has been submitted, the individual who provided this document is no longer authorized under either 8 C.F.R. §§ 292.1 or 292.2 to represent the applicant. Therefore, this decision will be furnished to prior counsel.

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 and through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b).

The applicant 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)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and, identify the location of

such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

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 the information being attested to.

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.* 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. *Id.*

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, 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, deny the application or petition.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet her burden of establishing his continuous unlawful residence in the United States during the requisite period. 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 Act, on August 9, 1993. At part #35 of the Form I-687 application where applicants were asked to list all absences from the United States back through January 1, 1982, the applicant listed one absence from this country when she traveled to Mexico for a vacation for an unspecified number of days from August 1987 to September 1987. Further, at part #36 of the Form I-687 application where applicants were asked to list all employment in the United States since first entry, the applicant listed “unemployed” from 1981 to the date the Form I-687 application was submitted on August 9, 1993.

The record shows that the applicant subsequently submitted her Form I-485 LIFE Act application on February 12, 2002.

In support of her claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted the following documents: a State of California Birth Certificate reflecting her daughter's birth in Riverside, California on April 9, 1982; a letter from a hospital; a patient identification card dated April 9, 1982; her daughter's immunization records; two receipts dated September 28, 1987; a State of California Department of Motor Vehicles Instruction Permit issued September 29, 1986; a bank statement for September 24, 1987 to October 25, 1987; and, tax documents for 1988.

The applicant provided two affidavits signed by [REDACTED] as well as single affidavits signed by [REDACTED] and [REDACTED]. While all of these affiants attested to the applicant's residence in the United States for the period in question, their testimony lacked sufficient details and verifiable information to corroborate the applicant's residence in this country for the requisite period.

The applicant included photocopies of photographs which purport to reflect her residence in the United States in January 1981 and November 1986. Nevertheless, these photocopied photographs have no probative value as the specific locations depicted in these photographs cannot be discerned.

The applicant submitted an affidavit signed by [REDACTED] who stated that he had known the applicant's family for many years. [REDACTED] declared that the applicant did housecleaning work and his wife had used her services from 1983 to 1985. [REDACTED] noted that he and his wife always paid the applicant in cash for such services. However, [REDACTED] failed to provide the applicant's address of residence during the period he and his wife employed the applicant as required by 8 C.F.R. § 245a.2(d)(3)(i). More importantly, [REDACTED]'s testimony that he and his wife employed the applicant the applicant as a housekeeper from 1983 to 1985 directly contradicted the applicant's testimony at part #36 of the Form I-687 application that she was "unemployed" from 1981 through the end of the period in question on May 4, 1988.

The applicant provided a letter of membership that is signed by [REDACTED] Mr. [REDACTED] stated that the applicant and her husband are members of the Santa Fe Spanish Congregation of Jehovah's Witnesses since September 1986 and listed his position as Presiding Overseer of this organization. Nevertheless, [REDACTED] failed to include the applicant's address of residence during her period of membership with this church as required under 8 C.F.R. § 245a.2(d)(3)(v).

The record shows that the applicant was interviewed regarding her Form I-687 application on August 9, 1993. The notes of the interviewing officer reflect that the applicant testified under oath that she first entered the United States in November 1981. The applicant acknowledged that she subsequently used a border crossing card that was initially obtained in 1982 to travel several times between the United States and Mexico. The applicant provided a Form I-186/I-586, Nonresident Border Crossing Card reflecting her entry in to this country on September 28, 1987

with a period of authorized stay until September 30, 1987. The record contains a signed sworn statement dated August 9, 1993, written by the applicant in her own hand and in her native language of Spanish that states in pertinent part:

Yo [redacted] [h]e salido a Mexico en 6-3-82 sali en 7-16-85 en 9-12-86 9-16-87 aproximadamente[sic] Yo [redacted] use la tarjeta para pasar a los estados unidos Yo vine a los estados unidos en 1981 de 1982 usa la tarjeta para poder venir a los estados unidos. [D]esde 1982 yo no entrado a los estados unidos sin ispenccion[sic]

The English translation of the applicant's signed sworn statement is:

I [redacted] have gone out to Mexico on June 3, 1982, went out on July 16, 1985, on September 12, 1986, September 16, 1987 approximately. I [redacted] used the border crossing card to pass in to the United States. I came to the United States in 1981 from 1982 used the border crossing card to be able to return to the United States. Since 1982, I did not enter the United States without inspection.

The record shows that the applicant was interviewed again on February 23, 2004. The notes of the interviewing officer reflect that the applicant testified under oath that she first entered the United States with a permit for six days in 1969 to attend a religious assembly. The applicant stated that she returned to the United States using her border crossing card in 1982 with her husband. The applicant acknowledged that she was absent from this country when she traveled to Mexico from August 1987 to September 1987 and then returned using her border crossing card to enter the United States.

The applicant's testimony both at her initial interview on August 9, 1993 and within her own sworn statement directly contradict her testimony that she had only one absence from the United States in the requisite period from August 1987 to September 1987 at part #35 of the Form I-687 application. The applicant's testimony that she first entered this country for six days in 1969 and did not return to the United States until 1982 at her interview on February 23, 2004 undermines her claim that she the began residing in this country prior to January 1, 1982 as required by section 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). In addition, the applicant's admission that she possessed a border crossing card beginning in 1982 and subsequently returned to Mexico on multiple occasions between 1982 and 1987 for unspecified lengths of time and subsequently entered the United States using the border crossing card brings in to question the applicant's overall credibility as well as the credibility of her claim of continuous unlawful residence in this country for the requisite period.

The director determined that the applicant failed to submit sufficient evidence demonstrating her residence in the United States in an unlawful status for the requisite period. The director further determined that the applicant herself had provided contradictory and conflicting testimony relating to critical elements of her claim of continuous unlawful residence in this country since

prior to January 1, 1982. Therefore, the director concluded that the applicant was ineligible to adjust to permanent residence and denied the Form I-485 LIFE Act application on July 1, 2004.

On appeal, the applicant reiterates her claim of residence in this country for the required period. The applicant asserts that she entered the United States in November 1981 and resided with her husband and friends in Lake Elsinore, California. The applicant contends that she traveled to Tijuana, Mexico in 1982 to obtain a border crossing and that she returned in a day or two to Lake Elsinore, California. The applicant claims that she obtained the border crossing card in order to travel back and forth across the border to visit her brother in Ensenada, Mexico but that she subsequently never returned to Mexico. However, the assertion that the applicant never used the border crossing card she obtained in 1982 to travel between the United States is negated by her own testimony and the fact that the record contains a Form I-186/I-586 border crossing card reflecting her entry in to this country on September 28, 1987. The applicant's remarks on appeal regarding the sufficiency of evidence she submitted to demonstrate her residence in this country during the period in question have been considered. However, the supporting documents contained in the record lack specific and verifiable testimony to substantiate the applicant's claim of residence in the United States for the requisite period. Further, the applicant's own conflicting testimony relating to a critical elements of her claim of residence since prior to January 1, 1982 diminishes her overall credibility as well as the credibility of her claim of continuous unlawful residence in this country for the requisite period.

The absence of sufficiently detailed supporting documentation and the conflicting testimony cited above 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 his burden of proof in establishing that he has resided in the United States for the requisite period 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 and conflicting nature of testimony contained in the record, 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.