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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: [Redacted]
MSC 03 091 61419

Offices: LOS ANGELES

Date: **MAR 03 2019**

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 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.

Perry J. 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 in Los Angeles, California. The decision is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that she entered the United States before January 1, 1982, and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal the applicant asserts that she has submitted sufficient credible evidence to establish that she meets the continuous residence requirement for legalization under the LIFE Act. The applicant requested a copy of the Record of Proceedings (ROP) and indicated that she will submit a brief/evidence within 30 days of receiving the ROP. The record reflects that the ROP was processed on May 15, 2009. The record also reflects that the applicant did not submit additional evidence as she had indicated. The AAO will consider the record as complete and will adjudicate the application based on the evidence in the record.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. *See* section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

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 its amenability to verification. *See* 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 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).

The applicant, a native of Mexico who claims to have lived in the United States since before January 1, 1982, filed her application for legal permanent resident status under the LIFE Act (Form I-485) on December 30, 2002.

In a Notice of Intent to Deny (NOID) dated January 17, 2007, the director indicated that the applicant did not submit sufficient credible evidence to establish her initial entry into the United States and her continuous unlawful residence in the country for the requisite period. The director granted the applicant 30 days to submit additional evidence.

The applicant did not respond to the NOID and on May 8, 2007, the director issued a decision denying the application based on the grounds stated in the NOID.

On appeal the applicant asserts that she has submitted sufficient credible evidence to establish that she meets the continuous residence requirement for legalization under the LIFE Act. The applicant further asserts that she did not receive the NOID and was unable to respond. The record shows that the NOID was mailed to the applicant's address of record, which is the same address the applicant provided on the Form I-290B (Notice of Appeal), and the NOID was not returned as undeliverable. Additionally, the applicant requested a copy of the ROP, which must have included a copy of the NOID. Therefore the applicant was aware of the issues raised in the NOID and had the opportunity to respond but she failed to do so. The AAO will consider the record as complete and will adjudicate the appeal based on the evidence in the record.

The AAO maintains plenary power to review each appeal 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 AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered the United States before January 1, 1982, and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that she has not.

The documentation submitted by the applicant in support of her claim that she meets the continuous unlawful residence requirement in the United States for the required period consists of the following:

- A copy of a Certificate of Live Birth issued by the State of California, for [REDACTED] born on December 27, 1986, showing the applicant as [REDACTED] mother.
- A copy of a certificate of baptism (in the Spanish Language) indicating that the applicant's daughter, [REDACTED] was baptized at Our Lady Queen of Angeles in Los Angeles, California, on May 2, 1987.
- A copy of a letter signed by [REDACTED] of St. Joseph Center in Venice, California, dated December 28, 1989, stating that the applicant had come to the center for assistance in May of 1979 for "translation and information and referral."
A series of affidavits from individuals who claim to have known the applicant resided in the United States from before January 1, 1982.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility.

The birth of the applicant's daughter in Los Angeles, California, on December 27, 1986, as evidenced by a copy of her birth certificate, and a copy of the daughter's baptismal certificate showing that the applicant's daughter was baptized in Los Angeles, California, on May 2, 1987, are credible evidence that the applicant was most likely residing in the United States from 1986 onwards. The AAO will focus its review in this proceeding on the evidence submitted by the applicant to establish her residence in the United States from before January 1, 1982 through the middle of 1986.

The letter by [REDACTED] of St. Joseph Center dated December 28, 1989, stating that the applicant had come to the center for assistance in May of 1979 for "translation and information and referral," has marginal evidentiary value. The letter is vague as to the nature and extent of the Center's relationship with the applicant. The letter did not provide any information as to the applicant's residence in the United States or her whereabouts after May 1979. Thus, the letter has little probative value as credible evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The affidavits in the record from individuals who claim to have known the applicant in the United States during the requisite period, have minimalist or fill-in-the-blank formats with very little input by the affiants. The affiants provided very few details about the applicant's life in the United States and the nature and extent of their interactions with her over the years. The affiants do not have a direct personal knowledge of the events and circumstances of the applicant's residence in the United States. The affiants did not submit documentation to establish their own identities and residence in the United States during the requisite period. The affidavits are not accompanied by any documentary evidence – such as photographs, letters, and the like – of the affiants' personal relationships with the applicant in the United States during the 1980s.

Additionally, some of the affiants provided information that is contrary to the applicant's prior statement. For example, [REDACTED] stated that she had personal knowledge that the

applicant resided in ██████████ California, from May 1979 up to the date the affidavit was prepared (December 29, 1989), and ██████████ stated that she had knowledge that the applicant resided in ██████████ California, from February 1983 to January 1990, and in ██████████ California, since January 1990. The applicant however, indicated that she resided in ██████████ California, from May 1979 to March 1985; in ██████████ California, from March 1985 to January 1989; in ██████████ California, from March 1989 to October 1989; and in ██████████ California, since October 1989. The contradiction between the applicant's statement regarding his residences in the United States since entry as indicated on the Form I-687 application she completed on December 29, 1989, and the two affidavits listed above, call into serious question the credibility of the two affidavits as well as the credibility and the reliability of the other affidavits in the record as credible evidence of the applicant's continuous residence in the United States during the requisite period.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice without competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

For all the reasons discussed above, the AAO finds that the affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988. The applicant did not submit any independent objective evidence to establish when she entered the United States. Thus, it must be concluded that the applicant has failed to establish her continuous unlawful residence in the United States for the requisite period.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that she entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act. Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

The appeal will be dismissed, and the application denied.

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