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U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: OCT 10 2007
MSC-03-113-61695

IN RE: Applicant: [redacted]

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. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director of the Lost Angeles District Office and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

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. 8 C.F.R. § 245a.11(b). The regulation at 8 C.F.R. § 245a.12(e) state that applicants for adjustment of status to that of a Legal Permanent Resident under this section bear the burden of establishing that they have resided continuously in the United States for the duration of the requisite period by a preponderance of the evidence.

The director concluded the applicant did not submit sufficient evidence in support of her claim of having entered the United States before January 1, 1982 and then having resided continuously since that time and then for the duration of the requisite period. In saying this, the director stated that bills submitted by the applicant as evidence in support of her claim are not from the requisite period and therefore are not relevant to this proceeding. The director went on to say that the affidavits submitted by the applicant alone were not considered by her office to be sufficient evidence to meet the applicant's burden of proof. It is noted that the director did not provide an explanation as to why her office found the affidavits submitted by the applicant to be insufficient. It is noted here, however, that the AAO found inconsistencies in the evidence submitted by the applicant in support of her application. One affidavit that contained inconsistencies was from [redacted] who states that she met the applicant through a friend at a Catholic Church in Whittier, California, indicating that the applicant and the affiant have met periodically at that church since December of 1981. However, the record contains the applicant's Form I-687 record submitted to establish class membership in 1995. Part #34 of this application asks her to list all clubs, organizations and churches of which she is a member. Here, the applicant indicated that she was not a member of any clubs, organizations or churches. This inconsistency casts doubt on the testimony contained in the affidavit from [redacted] which was submitted as evidence that the applicant continuously resided in the United States for the duration of the requisite period. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). As the director found the evidence submitted by the applicant was insufficient to prove by a preponderance of the evidence that the applicant had continuously resided in the United States for the duration of the requisite period, she denied the application.

On appeal, the applicant states that the Service erred in denying her application and asserts that that she met her burden of establishing by a preponderance of the evidence, that she is eligible to adjust status to that of a permanent resident. She goes on to say that the Service erred in not giving enough weight to affidavits she previously submitted.

Affidavits that have been properly attested to under perjury of law may be given more weight than a simple letter. However in determining the weight of an affidavit, it should be examined first to determine upon what basis the affiant is making the statement and whether the statement is internally

consistent, plausible, or even credible. Most important is whether the statement of the affiant is consistent with the other evidence in the record. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). Here, as previously noted, evidence contained in affidavits was inconsistent with other evidence in the record.

An adverse decision regarding temporary resident status may be appealed to the Administrative Appeals Office. Any appeal with the required fee shall be filed with the Service Center within thirty (30) days after service of the notice of denial. An appeal received after the thirty-day period has tolled will not be accepted. *See* 8 C.F.R. § 245a.2(p). Pursuant to 8 C.F.R. § 245a.20(b) (1), whenever a person has the right or is required to do some act within a prescribed period after the service of notice upon him and the notice is served by mail, three days shall be added to the prescribed period. Service by mail is complete upon mailing. If the last day of the period so computed falls on a Saturday, Sunday or a legal holiday, the period shall run until the end of the next day which is not a Saturday, Sunday, nor a legal holiday. 8 C.F.R. § 1.1(h).

The record reflects that the director sent her decision of January 9, 2007 to the applicant at her address of record. Citizenship and Immigration Services (CIS) received the appeal forty-three (43) days later on February 21, 2007.

Therefore, the appeal was untimely filed and it must be rejected.

ORDER: The appeal is rejected as untimely filed.