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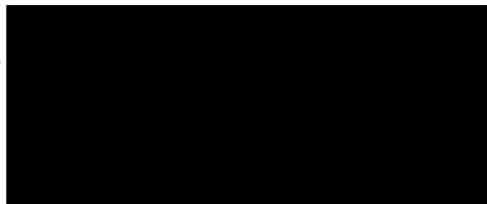
Office: LOS ANGELES

Date: DEC 08 2006

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. 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, Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Los Angeles, and is now before the Administrative Appeals Office 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 from before January 1, 1982 through May 4, 1988. In the Notice of Intent to Deny (NOID), the director stated that the affidavits submitted by the applicant “do not contain corroborative documentation to support [their] statement[s], thus lacking in probative value.” The director also notes that the applicant submitted tax documents in another person’s name, but “had not proven to have been using any other name than [her] own.” Consequently, the director found that the record “lacks documentation [of] credibility prior to 1985.”

On appeal, counsel contends that the applicant never received the NOID, but complied with a previous request for additional documentation of residency. Counsel asserts that the applicant has submitted sufficient evidence to establish continuous residency in the United States since prior to January 1, 1982.

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).

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).

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.

The AAO finds that the submitted evidence is not sufficiently relevant, probative, and credible.

The record shows that a NOID dated September 3, 2004 was issued to the applicant at her address of record. There is no evidence in the record to support counsel's assertions that the applicant did not receive the NOID. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The third party affidavits submitted by the applicant lack probative value because they do not contain specific information concerning the applicant's residences during the period of the affiants' acquaintance with her.

Although Citizenship and Immigration Services (CIS) 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L). While there is no specific regulation which governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements which affidavits are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information which an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to. See 8 C.F.R. § 245a.2(d)(3)(v).

The applicant has submitted virtually identical affidavits dated September 17, 2001 from [REDACTED] and [REDACTED] each attesting that the applicant lives at [REDACTED] California and that they have personally known her for a period that began prior to January 1, 1982. These affidavits do not provide any further information concerning the basis for the affiants' acquaintance with the applicant or other addresses where the applicant resided throughout the period in which the affiants have known the applicant. According to the applicant's Form I-687, Application for Status as a Temporary Resident, the applicant lived at three separate addresses from 1981 to 1988, none of which match the address listed by the affiants. None of the affidavits actually attest to the applicant's residence in the United States during the requisite period. Accordingly, the director was correct in finding that these affidavits lack probative value.

As additional evidence of residency for the period of 1981 through 1984, the applicant submitted copies of tax returns for an individual named [REDACTED] for the years 1981, 1983 and 1984. The applicant indicated in her Form I-687, Application for Status as a Temporary Resident, that she had used the name

and the record contains a copy of a Social Security card bearing that name. According to the I-687, the applicant worked at Nova Style, Inc. in 1981 and at Sees [REDACTED] from 1984 to 1985. The record contains a W-2 form from a [REDACTED] issued to a [REDACTED] for the year 1981, but does not contain any documentation showing that the applicant was employed by [REDACTED] Shops. In the Form I-687, the applicant lists no employment for the years 1982 or 1983, and the record does not contain a copy of a tax return for 1982.

The record also shows that the applicant was apprehended in San Diego, California on September 15, 1984 when she attempted to enter the United States with the documents of another alien. The applicant did not list any absences from the United States in her Form I-687 or other documentation. The record shows that when the applicant was presented with evidence of her attempted 1984 entry at her interview on August 24, 2004, the applicant admitted that she left the United States in the middle of 1984, but could not recall the exact duration of her absence.

An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceed one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. 8 C.F.R. § 245a.15(c)(1).

The applicant's failure to list her absence in 1984 on her Form I-687, and her inability to recall the duration of this absence, raises doubts as to the continuity of the applicant's residence in the United States. The foregoing evidence indicates that the applicant was absent from the United States for some period of time in 1984. In addition, the applicant has not indicated that she was employed in the years 1982 or 1983, and there is no tax return for the year 1982 in the record. The applicant's 1983 tax return lists an income of only \$1664.

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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). 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. *Id.* Here the applicant has failed to offer independent objective evidence that adequately explains and reconciles the inconsistencies concerning her absence from the United States in 1984. The inconsistencies and omissions in the record cast doubt on the reliability of the other evidence submitted by the applicant.

As the applicant has not submitted sufficient credible evidence of residency, she has not met her burden of proof in showing that he continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. Accordingly, the applicant has established eligibility to adjust status to Legal Permanent Resident status under section 1104 of the LIFE Act.

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