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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L2

[Redacted]

FILE:

[Redacted]

Office: LOS ANGELES

Date: DEC 22 2008

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:

[Redacted]

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. Any further inquiry must be made to that office.

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, California, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The 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.

On appeal, counsel states that the applicant has met her burden of proof and that the director did not give "careful consideration" to the applicant's evidence. Counsel submits a brief in support of the appeal.

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. Section 1104(c)(2)(B) of the LIFE Act; 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.

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).

The applicant stated on her Form I-687, Application for Status as a Temporary Resident, that she first entered the United States illegally on December 16, 1981. The applicant did not identify any addresses at which she lived prior to November 1987, when she stated that she lived at [REDACTED] California until July 1989. She also stated that she worked as a babysitter for [REDACTED] from January 1982 to September 1987, and for [REDACTED] from November 1987 to October 1989.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant submitted the following evidence:

1. A July 9, 1990 affidavit [REDACTED] in which he stated that he has known the applicant since January 1982, and has first-hand knowledge that she has resided in the United States since December 1981. Mr. [REDACTED] did not indicate the circumstances of his initial acquaintance with the applicant and did not indicate how he obtained his first-hand knowledge of her initial entry into the United States.
2. A June 10, 1990 affidavit from [REDACTED] in which she stated that she is a friend of the applicant and that she met her at a friend's party. Ms. [REDACTED] stated that she lived at [REDACTED] in Wilmington, California, and that the applicant was a resident at that address from December 1981 to 1988. As noted by the director, the applicant did not list any residences prior to November 1987 and did not indicate at any time that she resided in apartment [REDACTED].
3. A July 7, 1990 letter from [REDACTED] in which he stated that the applicant worked as his live-in babysitter from January 1982 to September 1987.
4. A rental application from [REDACTED] dated May 18, 1982 for apartment [REDACTED]. The application identifies the rental applicants as [REDACTED] and the applicant. We note that the record reflects that the applicant married a Paul Pineda on February 18, 1990. In her NOID, the director noted that the applicant is shown as "applicant 2" but that the signatures on the application do not match and that the dates are different. A review of the application shows that the applicant signed in the applicant block and another individual signed in the agent block. [REDACTED] signature does not appear in the signature block.

Counsel's argument as it pertains to this observation by the director is inconsistent with the document on its face, e.g., counsel argues that "[j]ust because [the applicant's] name was listed as applicant #2 on the Application to Rent, this does not mean that she was present that day the application was signed by the other applicants and it does not mean that her signature was also required since one of the applicant's had already signed." While we question counsel's interpretation of the evidence, we do not find the issue significant in this context.

Nonetheless, we do question the authenticity of the document. The original of the document, which is included in the record, shows that the date in the "start of rental period" block appears to have been altered to read May 10, 1982, and the amount in the "monthly rent" block changed. Further, the last sentence of the document offers applicants the opportunity to take the application home to complete provided that it is returned for verification by a date to be specified or risk losing their deposit. The preprinted year on the form is 1987, five years after the supposed execution date of the application. Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa application. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

5. A June 2 receipt from The Property [REDACTED] in Manhattan Beach, California. The receipt indicates that it is for apartment 221 and for the year 1982. However, the year appears to have been altered to add the year and the monthly rental charge appears altered. Further, the receipt reflects payment to a different management company than that with which the applicant allegedly entered into agreement in 1982, according to the document discussed above. While it is not inconceivable that the management companies changed, the dates indicated are less than a month apart, and there is nothing in the record to

confirm that the receipt and the application are for the same unit. 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 unless the applicant submits competent objective evidence pointing to where the truth lies. *Id.*

6. An undated letter from the [REDACTED] of [REDACTED] California, reflecting that the applicant had been a member of the church since January 1, 1982. The letter indicated that the information was taken from membership records.
7. Rental receipts dated in February, September and December 1983, indicating the applicant as the remitter of the payments. The receipts do not indicate the unit or item that was rented or the location of the unit.
8. Copies of receipts for registered mail dated in June and July 1983, showing the applicant as the purchaser with the [REDACTED] address in Wilmington; however, it cannot be determined when the applicant's name and address were added to these receipts.
9. Copies of rental receipts from The Property [REDACTED] for rental periods dated March and April. As with the previously discussed receipt from this company, the year 1983 appears to have been added and the amount for rent appears to have been altered. The applicant also submitted copies of receipts for January, August and December 1984, apparently for the same rental unit. However, these receipts are on Rediform documents and do not reflect a management companies as do the previous receipts. Additionally, the name of the street is misspelled on the two documents on which it appears.
10. Copies of money order receipts. The receipts dated in 1984 show the applicant's name and an address that appears to be in Mexico. There is no indication that the applicant was the purchaser of the money orders or that the money orders were purchased in the United States. Some of the receipts dated in 1986 and purchased through Continental Express Company, who lists a mailing address in Los Angeles, California, contain the applicant's name; however, there is no indication as to when her name was added to the receipt. Copies of other money order receipts from Travelers Express reflect the applicant's name and address at the bottom written over other writing. They also show the applicant as the payee. Neither of these receipts carries a legible date.
11. A copy of a July 18, 1987 appointment slip for the applicant from the Los Angeles County Public Health Programs.
12. A July 9, 1990 sworn letter from [REDACTED] in which he verified that the applicant worked for him from November 1987 to October 1989. Mr. [REDACTED] listed his address as [REDACTED] and stated that the applicant worked as a live-in babysitter until July 1989, when she apparently moved out on her own.

In her Notice of Intent to Deny (NOID) dated September 29, 2004, the director noted that on the Form I-687, the applicant had listed only two addresses at which she lived during the qualifying period, but that documentation submitted by the applicant and answers in her interview conflicted with this statement. In her letter in rebuttal of the NOID, counsel stated that the applicant would have stated, if asked during the interview, that she resided concurrently at [REDACTED] from November 1987 to July 1989. On appeal, counsel also expands that statement to include the applicant's residency during her employment with Mr. [REDACTED]. However, nothing in the record supports counsel's statement. 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). Neither of the applicant's employers or the applicant herself indicated that she lived away from her jobs during the qualifying period.

We note that the director and counsel contest the issue of the applicant's alleged residence at 1340 Hyatt Avenue in Wilmington, California as shown on registered mail receipts. As these documents are dated subsequent to the qualifying period, they are not relevant in determining the applicant's presence and continued residency in the United States during the requisite period or for benefits under the LIFE Act.

We reject counsel's arguments on appeal that the applicant has submitted sufficient evidence to meet her burden of proof. Given the unresolved inconsistencies in the documentation submitted by the applicant, it is concluded that the applicant has failed to establish continuous residence in the United States for the required period.

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