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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 02 192 60102

Office: DALLAS

Date: JUN 30 2006

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. 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, Dallas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because she determined that 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.

On appeal, the applicant provides the following additional evidence to establish continuous, unlawful residence in the United States during the statutory period: a photocopy of an envelope postmarked November 13, 1986 which the applicant claims to have mailed to Mexico; and four photographs of the applicant which she claims were taken in the United States during 1984 and 1985.¹

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 through May 4, 1988. See § 1104(c)(2)(B) of the LIFE Act and 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 states 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

¹ It is noted that the applicant is represented by an attorney at an organization that is no longer recognized by the Executive Office of Immigration Review. (See <http://www.usdoj.gov/eoir/statpub/AC30405.pdf>, accessed on June 21, 2006.) Since the alien has not provided evidence that she is now represented by an EOIR-recognized organization or attorney who works for such an organization, the AAO will consider the applicant to be self-represented in this proceeding.

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 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).

Here, the submitted evidence is not relative, probative and credible.

On June 27, 1993, the applicant applied for class membership in a legalization class-action lawsuit and submitted Form I-687, Application for Status as a Temporary Resident. On April 10, 2002, the applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

The applicant filed the following documents in support of her claim that she resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988:

1. A notarized employment affidavit from [REDACTED] dated June 27, 1993 which indicates that the applicant provided child care for [REDACTED] children and worked as his housekeeper from 1982 through the date that the affidavit was signed.
2. An updated, notarized employment affidavit from [REDACTED] dated March 4, 2002 which indicates that the applicant provided child care for [REDACTED] children and worked as his housekeeper from 1982 through 1991.
3. The notarized affidavit of [REDACTED] dated June 29, 1993 which indicates that [REDACTED] is a friend of the applicant's family and that he has personal knowledge that the applicant resided in Dallas, Texas from January 1982 through the date that the affidavit was signed.
4. The notarized affidavit of the applicant's nephew [REDACTED] dated June 27, 1993 which indicates that [REDACTED] has personal knowledge that the applicant resided in the United States from January 1982 through the date that the affidavit was signed.
5. The notarized affidavit of [REDACTED] dated March 11, 2002 which indicates that [REDACTED] met the applicant while on a visit to his brother's home in Texas during November 1981.

On March 8, 2004, the district director issued a Notice of Intent to Deny (NOID). She concluded that the applicant had failed to submit adequate, credible evidence of continuous, unlawful residence in the United States from prior to January 1, 1982 through May 4, 1988. The director provided the applicant with thirty days during which she might submit additional evidence of having resided in the United States during the statutory period.

The applicant did not respond to the NOID.

On May 6, 2004, the director denied the application based on the reasons set out in the NOID.

On appeal, the applicant submits a photocopy of an envelope which she claims to have mailed from Dallas, Texas to Mexico during 1986. The applicant also submits the photocopies of four photographs of herself which she claims were taken during the statutory period.

In response to the NOID and on appeal, the applicant had the opportunity to provide contemporaneous evidence of having resided in the United States during the statutory period as well as to provide additional affidavits and employment letters which attest to her residence in the United States during the statutory period. In the alternative, she had the opportunity to submit an explanation as to why she was not able to provide more extensive documentation of having resided in the United States during the requisite periods. However, the applicant failed to respond to the NOID and on appeal she provided only evidence which is not probative.

Specifically, on appeal, the applicant submitted the photocopy of an envelope postmarked November 13, 1986 in Dallas, Texas that she claimed to have mailed. Yet, the envelope bears a return address that is different from that which the applicant lists on the Form I-687 as her address during 1986. The return address on this envelope appears as [REDACTED] Dallas, Texas 75245.² Yet, on the Form I-687, the applicant stated that she resided at [REDACTED] Dallas, Texas 75231 from January 1982 through the date that she filed this form in June 1993. The applicant also indicated on the Form G-325A, Biographic Information, dated April 3, 2002 that she resided at [REDACTED] Dallas, Texas from January 1982 through August 2000. Also, the first name of the sender is not legible on the photocopy of the envelope, nor is the second family name of the sender. On the submitted photocopy, only [REDACTED] is legible as being the first of the sender's two family names. The return address appears to have been altered such that the sender's first name and second family name have been whited-out.

The applicant also submitted the photocopies of four photographs of herself on appeal. It is not evident whether these photos were taken during the statutory period or outside the statutory period. It is also not clear whether the photos were taken in the United States or outside the United States.

Thus, the evidence submitted on appeal is not probative.

Further, the employment affidavit dated June 27, 1993 indicates that the applicant worked for [REDACTED] from 1982 through June 1993. However, the updated affidavit dated March 4, 2002 specifies that the applicant stopped working for [REDACTED] in 1991. This inconsistency undermines the credibility of the applicant's evidence.

Also, the Form I-687 at Part #33 indicates that the applicant first took up residence in the United States in January 1982. Yet, on the Form for Determination of Class Membership in *CSS v. Meese*, the applicant indicates that she resided continuously in the United States from November 1981

² The initial digit(s) of the sender's street address may be missing from the photocopy. Also, the apartment number of the return address on this envelope appears to have been whited-out.

through June 1993, except for a thirty-seven day absence beginning in December 1987. This inconsistency undermines the credibility of the applicant's evidence and her claim that she resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. at 582.

The remaining supporting evidence - an affidavit from the applicant's nephew and affidavits from two friends of the applicant's family - are not competent, objective evidence sufficient to overcome the inconsistencies and deficiencies in the record.

In sum, the applicant did not provide any probative, contemporaneous evidence of having resided in the United States during the statutory period, nor did she provide any explanation as to why she was unable to provide such evidence. She provided an envelope postmarked in 1986 which appears to have been altered. She submitted employment affidavits that contained contradictory information. She submitted inconsistent statements as to when she first took up residence in the United States. She did not otherwise establish that she resided continuously in the United States during the statutory period.

Thus, it is found that the applicant has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988. Accordingly, the applicant is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

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