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[Redacted]

FILE:

[Redacted]

Office: LOS ANGELES

Date: AUG 30 2007

MSC 02 094 61773

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 (AAO) 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.

On appeal, the applicant asserts that she has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. The applicant argues that the director chose to dwell on the discrepancies created by a poorly completed application rather than admit that the documents had satisfied the preponderance of the evidence standard.

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 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).

Here, the submitted evidence is not relevant, probative, and credible. In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence:

- Several pay stubs issued by [REDACTED] in Los Angeles, California dated January 28, 1988, February 5, 1988, March 4 and 18, 1988.
- A 1987 wage and tax statement from [REDACTED] in Los Angeles, California along with two pay stubs dated August 2, 1987 and September 11, 1987.
- Her son's January 4, 1987 birth certificate.
- Several pay stubs issued by [REDACTED] in Los Angeles, California for the periods ending June 19, 1986, July 24, 1986, September 11, 18 and 25, 1986 and November 6 and 20, 1986.
- A notarized affidavit from [REDACTED] of Los Angeles, California, who indicated that the applicant resided in his home and was employed as a housekeeper and babysitter from October 1981 to November 1985.
- A notarized affidavit from [REDACTED] of Glendale, California, who attested to the applicant's residence in the United States since October 1981. The affiant asserted that the applicant is his wife's niece.
- A California identification card issued on April 29, 1988, which listed the applicant's Los Angeles address as [REDACTED]
- A document dated December 26, 1986 from the California Health and Welfare Agency.
- 1986, 1987 and 1988 federal income tax returns.

The applicant also submitted a PS Form 3806, Receipt for Registered Mail, dated June 24, 1986 and Form 1040s for 1986 to 1988. However, as the applicant's name was not listed on the PS Form 3806, it has no probative value or evidentiary weight. Likewise, the income tax returns have little evidentiary weight or probative value as they were not certified as being filed.

It is noted that in response to a Form I-72, the applicant provided corroborative documents from [REDACTED] and [REDACTED] which established that each affiant was present in the United States during the time period they attested to in their affidavits. Nevertheless, the AAO does not view the affidavits from the affiants as substantive enough to support a finding that the applicant entered and began residing in the United States before January 1, 1982 to May 1986. Specifically:

1. [REDACTED] attested to the applicant's residence in the United States since October 1981, but provided no address for the applicant.
2. Likewise, [REDACTED] claimed that the applicant resided in his home from October 1981 to November 1985, but failed to list the address.
3. No declaration from the applicant's husband has been provided in an effort to establish her residence and presence in the United States since their marriage on November 8, 1985.
4. The address listed on her Form I-687 application during the period of April 1985 to November 1987 do not coincide with the address listed on her Form G-325A, Biographic Information, which was submitted with her LIFE application in January 2002.
5. In a subsequent Form I-687 application filed under *CSS/Newman* Settlement Agreements in January 2006, the applicant listed her addresses during the requisite period. However, the addresses during the period of October 1981 to November 1987 do not coincide with the addresses listed on her Form G-325A.
6. The applicant claimed that she has been residing in the United States since October 1981, but provides affidavits from only two affiants.

In her Notice of Intent to Deny dated November 2, 2004, the director advised the applicant that her Form I-687 application did not coincide with the evidence provided as she did not list any residence prior to 1985 or

any employment on her Form I-687 application. The director noted that these discrepancies raised questions of credibility regarding her claim of residence in the United States during the requisite period. The applicant was also advised that the affidavits submitted were lacking evidentiary weight as they did not contain sufficient information and were not accompanied by corroborative documents.

The applicant, in response, asserted, in part:

The discrepancies are very easy to explain because they represent the difference between a "Temporary Resident Application" hastily completed from memory under pressure and an "Adjustment Application under Life" thoughtfully and diligently completed with advantages of having all my documents and address book in hand.

The applicant submitted copies of previously submitted documents along with an affidavit from [REDACTED] of Los Angeles, California, who assisted in preparing her Form I-687. [REDACTED] asserted that the applicant asked that she accompany her to the Los Angeles Office because the applicant did not speak English. [REDACTED] asserted that she asked the applicant questions on the application and she answered as best she could from memory, particularly her residences and employers. [REDACTED] stated the applicant was very nervous and was not clear about some of the answers because she did not have any documents with her at the time they went to the Los Angeles Office. [REDACTED] stated, " We were not that worried, however, because we had heard on the radio that Immigration was accepting "skeleton" applications as long as the basic name and address information was present. More detailed and precise information could be presented later."

The applicant also submitted a letter from [REDACTED] of Saint Bernard Church in Los Angeles, California who indicated that the parish records indicated that the applicant has been attending services since 1981.

The letter from [REDACTED] has little evidentiary weight or probative value as it does not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, the pastor does not explain the origin of the information to which he attests.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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. 582 (BIA 1988).

The evidence of record submitted does not establish with reasonable probability that the applicant was already in the United States before January 1, 1982 and that she was in a continuous unlawful status up to her *alleged re-entry* on November 26 1985.

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). Given the credibility issues arising from the documentation provided by the applicant, it is determined that the applicant has

failed to meet this burden. Accordingly, the applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE

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