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U.S. Citizenship
and Immigration
Services

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62

[Redacted]

FILE:

[Redacted]

Office: LOS ANGELES

Date:

JAN 25 2007

MSC 02 155 60995

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Los Angeles, California, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act on October 27, 2004, based on the applicant's failure to submit a response to the Notice of Intent to Deny (NOID) issued on July 29, 2004. On a November 9, 2004 service motion to reopen and reconsider, the director withdrew her decision of October 27, 2004, and determined that the applicant had overcome the grounds for denial of her application. Nonetheless, the director again denied the application on November 9, 2004, citing the applicant's failure to overcome all of the grounds for denial that were set forth in the NOID. The matter 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 provided credible evidence to establish her continued unlawful residency in the United States since prior to January 1, 1982. Counsel submitted 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).

On a form to determine class membership, which she signed under penalty of perjury on April 25, 1990, the applicant stated that she first came to the United States in February 1981. On her Form I-687, Application for Status as a Temporary Resident, which she also signed under penalty of perjury on April 25, 1990, the applicant stated that her only absence from the United States during the qualifying period was from June 5 to June 20, 1987, when she traveled to Mexico to get her children. The applicant further stated that she worked for [REDACTED] in Long Beach, California from 1981 until the date of her Form I-687 application, and that she lived at [REDACTED] in Long Beach during the entire qualifying period.

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

1. An April 25, 1990 letter from the owner of [REDACTED] in which he stated that the applicant worked as a cleaner, cook and waitress for the company from March 1981 until "the present."
2. A June 27, 2003 sworn statement from [REDACTED] in which he stated that the applicant lived with him from "the beginning of 1981 until the end of 1987." Mr. [REDACTED] stated that the applicant did not pay rent or assist with the utilities because she helped the family with caring for the children and performing household chores. Mr. [REDACTED] did not state the address at which he lived during the requisite period, but stated that he was currently residing at [REDACTED]. We note that the applicant stated that she lived at the same address from 1981 until 1990. Mr. [REDACTED] did not indicate that he and his family had moved in 1987, leaving the applicant as the sole occupant of the property at which they had lived. 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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In an earlier statement dated February 21, 2002, Mr. [REDACTED] stated that he had maintained a friendship with the applicant since 1980.
3. A February 20, 2002 sworn statement from [REDACTED] in which she certified that she had known the applicant since 1981, and that they "have maintained a very healthy relationship ever since." Ms. [REDACTED] did not state that her relationship with the applicant was initiated in the United States or that the applicant was present and living in the United States during the qualifying period.
4. A September 14, 2004 sworn statement from [REDACTED] in which she stated that she had known the applicant since 1981. [REDACTED] gave no details surrounding her initial acquaintance with the applicant and did not indicate that the applicant was present and living in the United States during the qualifying period.
5. A February 20, 2002 sworn statement from [REDACTED] in which she stated that she had known the applicant since 1982, and that the applicant had been a client at her beauty shop for "many years." In an August 10, 2004 affidavit, Ms. [REDACTED] also stated that the applicant would sometimes help to clean the shop.
6. A February 21, 2002 sworn statement from [REDACTED] in which she stated that she had maintained a friendship with the applicant since they met in 1983. Ms. [REDACTED] did not indicate that

the friendship with the applicant was formed and maintained in the United States and did not attest that the applicant was present and living in the United States during the required period.

7. Copies of two rental receipts dated February 1 and March 1, 1983, reflecting that the applicant paid \$200 rent for a unit at [REDACTED]. The authenticity of these documents is suspect, however, as the applicant stated that she lived at [REDACTED] during this period, and, as discussed below, that she lived with [REDACTED] but did not pay rent. Mr. [REDACTED] also stated that the applicant did not pay him rent during the time that she lived with him from 1981 to 1987. 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. at 591.
8. An August 30, 2004 letter from Dr. [REDACTED] in which he stated that the applicant was under his care from June 8, 1987 to August 30, 2004.

During her LIFE Act interview on July 2, 2003, the applicant stated that she had arrived in the United States in 1981 with [REDACTED] a family friend, and that she had worked in his home, helping with the **housekeeping from 1981 until 1984**. The applicant stated that Mr. [REDACTED] did not charge her rent but paid her "a little cash." The applicant further stated that she worked as a waitress at a restaurant in Long Beach from 1984 until 1988; however, she could not remember the name of the restaurant, which paid her in cash. This statement conflicts with the applicant's statement on the Form I-687 application and the employment verification letter indicating that she worked for [REDACTED] from 1981 until 1990, the date of her Form I-687 application. It is highly unlikely that **the applicant would forget the name of the restaurant at which she allegedly worked for more than nine years.** *Id.*

During her interview, the applicant also admitted to three absences during the qualifying period instead of the one absence she admitted to on her Form I-687 application. The applicant stated that she left the United States in December 1982 for approximately eight days because there were problems in Mexico and she had to go there. She also stated that there were problems in Mexico in April 1983, and that she went there and remained for approximately 20 days. We note that on her Form I-485, Application to Register Permanent Residence or Adjust Status, the applicant stated that she had a daughter born in Mexico on April 29, 1983. The applicant further stated that she left in June 1987 to bring her children from Mexico to the United States.

Given the suspect documentation, the minimum contemporaneous documentation, and the unresolved inconsistencies in the record, it is concluded that the applicant has failed to establish continuous residence in the U.S. for the required period.

The record reflects that the applicant filed a new Form I-687 on June 20, 2005, which was subsequently denied for abandonment. Although the applicant filed a Form I-290B, Notice of Appeal to the Administrative Appeals Office, the director correctly advised her that an applicant that is denied for abandonment may not be appealed. 8 C.F.R. § 103.2(b)(15). Accordingly, the director's denial of the applicant's 2005 application is not at issue in this decision.

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