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FILE: [REDACTED] Office: EL PASO
MSC 02 206 61046

Date: JUN 22 2007

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, El Paso, 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, counsel submits additional evidence and asserts that the applicant has submitted sufficient evidence to establish continuous residence by a preponderance of the evidence.

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 through May 4, 1988. 8 C.F.R. § 245a.11(b).

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 exceeded 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).

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).

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).

Nevertheless, an affidavit not meeting all the foregoing requirements may still merit consideration as "any other relevant document" pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must be on employer letterhead stationery, if the employer has such stationery, and must include the following:

- (A) Alien's address at the time of employment;
- (B) Exact period of employment;
- (C) Periods of layoff;
- (D) Duties with the company;
- (E) Whether or not the information was taken from official company records; and
- (F) Where records are located and whether the Service may have access to the records.

The regulation further allows that if official company records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and explaining why such records are unavailable may be submitted in lieu of meeting the requirements at (E) and (F) above.

Here, the submitted evidence is not sufficiently 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 throughout the application process:

- An affidavit notarized on November 2, 2004 from [REDACTED] stating that the applicant resided with her from 1981 to March 1985. The applicant left for Mexico to give birth to a son in March 1985, but returned to reside with the affiant in June 1985. The applicant left for

Mexico to give birth to a daughter in May 1987, but returned to reside with the affiant in September 1987 until February 1991. The applicant and the affiant cleaned houses together.

- An affidavit notarized on November 2, 2004 from [REDACTED] stating that she has been friends with the applicant in El Paso, Texas since 1981.
- An affidavit notarized on November 1, 2004 from the applicant sister, [REDACTED] who states that the applicant came with her to the United States in 1981 and that they worked together cleaning houses thereafter. The affiant states that the applicant lived with [REDACTED] first at [REDACTED] and then at [REDACTED] in El Paso, Texas.
- An affidavit notarized on October 26, 2004 from [REDACTED] stating that he met the applicant through [REDACTED] in 1981. [REDACTED] visited [REDACTED] “every couple of months” and saw the applicant at her residence each time.
- An affidavit notarized on October 21, 2004 from [REDACTED] stating that to the best of her knowledge, the applicant has lived and worked in El Paso, Texas since 1981. The applicant performed housework for the affiant beginning in 1981 and intermittently thereafter.
- An affidavit notarized on October 21, 2004 from [REDACTED] stating that the applicant worked for his mother in El Paso, Texas beginning in 1981, and that he would visit her mother from California “about four times a year.”
- An affidavit notarized on October 14, 2004 from [REDACTED] attesting that she met the applicant in 1981 and knows the applicant has lived and worked in El Paso, Texas since then. [REDACTED] states that the applicant performed housework for her every other week.
- An affidavit notarized on October 19, 1993 from [REDACTED] stating that the applicant has worked continuously for her as a housekeeper “one day a week” since 1988.
- An affidavit notarized on October 18, 1993 from [REDACTED] stating that the applicant resided with her from 1981 to 1985, at which time the applicant returned to Mexico to give birth to a son. The applicant returned to live with the affiant in June 1985 and resided with her until she returned to Mexico in May 1987 to give birth to a daughter. The applicant returned to live with the affiant until February 1991.
- An affidavit notarized on September 9, 1993 from [REDACTED] stating that the applicant worked for her father in 1981 and then for the affiant in 1988 performing “cleaning and light housework one day a week since then.”
- An affidavit notarized on September 8, 1993 from [REDACTED] stating that she met the applicant in El Paso and has seen the applicant “at least two or three times a month” for approximately 12 years.

- An affidavit notarized on September 7, 1993 from [REDACTED] and [REDACTED] stating that the applicant has worked for them since 1992 and they know the applicant has resided in the United States since 1981.

On August 27, 2003, the director issued a Notice of Intent to Deny (NOID) noting that the applicant had failed to respond to a request for evidence of her physical presence in the United States during the qualifying period. The director stated that failure by the applicant to submit such evidence would result in denial of the application.

In a decision to deny the application dated March 4, 2004, the director observed that the applicant had been given notice that her evidence of residency was insufficient but had failed to submit additional evidence.

On appeal, counsel submits additional affidavits, including affidavits from [REDACTED] and [REDACTED]. Counsel asserts that the applicant has submitted sufficient evidence to establish continuous residence by a preponderance of the evidence.

Upon review of all the evidence in the record, including the evidence submitted on appeal, the AAO determines that the applicant's evidence of residency is not sufficiently relevant, probative, and credible to meet the applicant's burden of proof. Specifically:

- [REDACTED] states in her two affidavits that the applicant resided with her from 1981 to March 1985, from June 1985 to May 1987, and again from September 1987 to February 1991. [REDACTED] lists her address as [REDACTED] in El Paso, Texas. On her Form I-687, the applicant also lists her address during these periods as [REDACTED] in El Paso, Texas. However, the applicant's sister [REDACTED] states in her affidavit that she came with the applicant to the United States and the applicant initially resided with [REDACTED] at [REDACTED] in El Paso, Texas.
- [REDACTED] and [REDACTED] attest that the applicant worked for [REDACTED] during the qualifying period, but the applicant did not list this employment in her Form I-687.
- [REDACTED] attests that the applicant performed housecleaning services for his mother for approximately ten years, but fails to list his mother's name, her address or provide other details concerning the applicant's employment. [REDACTED] only contact with the applicant during the qualifying period consisted of occasional visits to Texas from his home in California.
- [REDACTED] attests to seeing the applicant at the home of [REDACTED] only when he visited "every couple of months." [REDACTED] fails to list the address of [REDACTED] residence.

- [REDACTED] attests that she and the applicant “became friends and began visiting each other” in 1981, but does not state the frequency of her contact with the applicant during the qualifying period or the address at which the applicant resided.
- [REDACTED] attests that the applicant has resided in the United States since 1981, but fails to provide details concerning the origin of this information or the nature of his relationship with the applicant prior to 1992, the year when the applicant began working in his house.
- The applicant has provided no additional evidence supporting the assertion on Form I-687 that the date she entered the United States was June 22, 1981. The affidavits submitted by the applicant indicate at most that the applicant entered the United States sometime in 1981.

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).

It is reasonable to expect the applicant to resolve the contradictions in the evidence through explanations from the affiants providing the contradicting testimony and through other credible evidence. Although the applicant has submitted other evidence showing her presence in the United States during the qualifying period, the applicant has failed to present sufficient credible, relevant and probative evidence of residency to adequately address the discrepancies noted herein. These discrepancies raise questions about the authenticity of the remaining documents the applicant has presented in attempt to continuous residence in the United States prior to January 1, 1982 through May 4, 1988.

Furthermore, both of the applicant's absences from the United States exceeded 45 days, and the aggregate of all her absences exceeded 180 days. According to the applicant's I-687, the applicant left the United States in March 1985, her son was born on April 1, 1985, and the applicant returned to the United States in June 1985. The applicant left the United States again in May 1987, her daughter was born on July 6, 1987, and the applicant returned to the United States in September 1987. The applicant has asserted that she did not return earlier after giving birth to her children because her children were born by caesarean section, but this explanation alone does not establish an emergent reason. Accordingly, the applicant has also failed to establish continuous residence in the United States in an unlawful status since January 1, 1982 through May 4, 1988 because she was absent from the United States on two occasions in excess of 45 days, with an aggregate of all absences exceeding 180 days.

The regulation at 8 C.F.R. § 245a.12(e) provides that “[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods.” Preponderance of the

evidence is defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black’s Law Dictionary 1064 (5th ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

Given the contradictions and other insufficiencies in the evidence, the AAO determines that the applicant has not met her burden of proof. The applicant has not established, by a preponderance of the evidence, that she entered the United States before January 1, 1982, and resided in this country in an unlawful status continuously since that time through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b).

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