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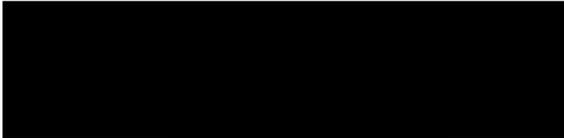
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
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FILE: [REDACTED]
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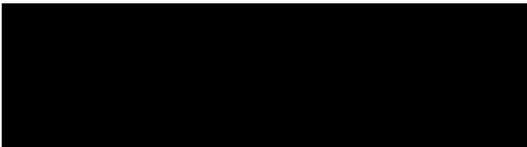
Office: Baltimore

Date: MAR 29 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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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.

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

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

The district director determined that 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 as required under section 1104(c)(2)(B)(i) of the LIFE Act, Pub. L. 106-553, 114 Stat. 2762 (2000), *amended* by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000). The district director concluded that the applicant was ineligible to adjust to permanent residence under the provisions of the LIFE Act and denied the application.

On appeal, counsel asserts that the applicant did continuously reside in the United States for the period in question and disputes the determination that she did not submit sufficient supporting documentation to corroborate her claim of residence in this country. Counsel claimed that the district director ignored the difficulties in obtaining evidence relating to events that occurred more than twenty years ago. Counsel submits documentation 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. 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 under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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. See 8 C.F.R. § 245a.12(e).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982 to May 4, 1988, the submission of any other relevant document including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

8 C.F.R. § 245a.2(d)(3)(v) states that attestations by churches, unions, or other organizations to the applicant's residence by letter must: identify applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

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.

The issue to be examined in this proceeding is whether the applicant has submitted sufficient credible evidence to 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. Here, the submitted evidence is not relevant, probative, and credible.

The applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Act on April 17, 1990. At part #33 of the Form I-687 application where applicants were asked to list all residences in the United States since the date of their first entry, the applicant listed [REDACTED] from January 1981 to March 1984 and [REDACTED] from March 1984 to February 1990. Furthermore, at part #34 of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, businesses, etc., the applicant listed "None." In addition, at part #36 of the Form I-687 application where applicants were asked to list all employment in the United States since entry, the applicant indicated that she worked in "housekeeping" for [REDACTED] from either January 1981 or January 1982 to February 1983. It must be noted that it appears that when the Form I-687 application was executed, both the numbers one and two were overwritten as the applicant listed her dates of employment for [REDACTED]. The applicant also listed employment in "housekeeping" for [REDACTED] from February 1983 to December 1984 and [REDACTED] from January 1985 to April 17, 1990, the date the Form I-687 application was submitted to the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS).

In support of her claim of continuous residence in the United States from prior to January 1, 1982, the applicant submitted an affidavit that is signed by [REDACTED] stated that the applicant worked for her from January 1982 to February 1983, she failed to provide any testimony relating to the applicant's residence in the United States for that period from prior to January 1, 1982 and that period from March 1983 to May 4, 1988. Further [REDACTED] failed to provide any specific, detailed, and verifiable testimony, such as the applicant's job duties or her address(es) of residence in this country during that period she purportedly employed the applicant.

The applicant included an affidavit signed by [REDACTED] who declared that applicant "...worked with..." her from February 1983 to December 1984. However, [REDACTED] testimony that she worked with the applicant is in conflict with the applicant's testimony that she worked for rather than with Ms. [REDACTED] from February 1983 to December 1984 at part #36 of the Form I-687 application. In addition, [REDACTED] failed to attest to any relevant and pertinent information relating to the applicant's residence in the United States in that period she either employed or worked with the applicant. Moreover, Ms. [REDACTED] failed to provide any testimony relating to the applicant's residence in this country in those periods from prior to January 1, 1982 to January 1983 and from January 1984 to May 4, 1988.

The applicant provided an affidavit that is signed by [REDACTED] stated that the applicant worked for him from January 1985 to May 8, 1990, the date the affidavit was executed. [REDACTED] noted that the applicant worked for him from January 1985 to May 8, 1990, he failed to provide any testimony relating to the applicant's residence in the United States for that period from prior to January 1, 1982 to December 1984. Additionally, [REDACTED] failed to provide any specific and verifiable testimony, such as the applicant's job duties or her address(es) of residence in this country during that period he purportedly employed the applicant.

The applicant submitted an affidavit signed by [REDACTED] who indicated that she had personal knowledge that the applicant resided in Miami from February 1982 to May 8, 1990 the date the affidavit was executed. However, [REDACTED] testimony that the applicant resided in Miami in this period is in conflict with the applicant's testimony that she resided in [REDACTED], Florida from January 1981 to March 1984 and North Miami, Florida from March 1984 to February 1990. Further, [REDACTED] failed to provide any testimony that the applicant resided in the United States from prior to January 1, 1982 up to February 1982.

The record contains photocopies of two pages of the applicant's Indian passport and her Form I-94, Arrival-Departure Record. The photocopied pages of the applicant's Indian passport show that she was issued a B-1/B-2 visitor's visa at the United States Consulate in Madras, India on August 12, 1987. The photocopy of the Form I-94 reflects that the applicant entered this country as a B-2 visitor at New York, New York on September 22, 1987 with a period of authorized stay until March 21, 1988. Although the applicant's entry into the United States with a B-2 visitor's visa on September 22, 1987 appeared to be a lawful entry, she claimed that she was returning to her prior unlawful and unrelinquished residence in this country. Nevertheless, neither the photocopied passport pages nor the Form I-94 demonstrate that the applicant resided in this country from prior to January 1, 1982 through September 21, 1987.

The record shows that the applicant filed her Form I-485 LIFE Act application with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) on June 3, 2002. With the Form I-485 LIFE Act application, the applicant included a photocopy of an employment letter containing the letterhead of MerriBeck Inc., Citrus Fruit Harvesting Grove Caretaking in Vero Beach, Florida. This letter is dated August 1989 and is signed by [REDACTED] who listed her position with MerriBeck Inc., as bookkeeper. [REDACTED] testified that the applicant worked for this enterprise for 100 days from November 20, 1985 to February 26, 1986. However, the applicant failed to provide any explanation as to why she failed to list her employment for MerriBeck Inc., at part #36 of the Form I-687 application where applicants were asked to list all

employment in the United States since entry. Further, the applicant failed to advance any explanation as to why she did not previously submit this employment letter as evidence of her residence in this country during the requisite period as such letter was purportedly in her possession since the date it was executed in August 1989.

The applicant provided a letter dated May 27, 2002 on the letterhead of the Marthoma Church of Greater Washington in Takoma Park, Maryland. The letter is signed by [REDACTED] who listed his position as vicar. This individual stated that the applicant was known to him since 1981 and that she was a member of this parish. However, [REDACTED] failed to provide any direct and specific testimony relating to the applicant's residence in this country for the requisite period. In addition, it must be noted that at part #34 of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, businesses, etc., the applicant listed "None."

The applicant submitted a letter dated May 28, 2002 that contains the letterhead of [REDACTED] Church in Punalur, India. The letter is signed by [REDACTED] who stated that the applicant had been an active member of this church until 1981 when she went to the United States. Although [REDACTED]'s testimony indicated that the applicant resided in the United States from 1981 onwards, he failed to provide any relevant and verifiable information such as the applicant's address(es) of residence in this country, to corroborate the applicant's claim of residence in this country for the requisite period.

While the applicant included other evidence of residence with her Form I-485 LIFE Act application, such evidence demonstrates her residence in this country subsequent to that period from prior to January 1, 1982 to May 4, 1988 and, therefore is not probative to her claim of residence in the United States in the requisite period. It is noted that this evidence included a photocopy of a receipt from the Pasteur Medical Clinics in Hialeah, Florida that bears the applicant's name, her signature, and the dates August 14, 1989 and September 11, 1989.

The district director subsequently issued a notice to the applicant on November 7, 2003, informing her of CIS' intent to deny her Form I-485 LIFE Act application. The district director noted that the applicant had failed to submit sufficient evidence to corroborate her claim of continuous residence in this country from prior to January 1, 1982 to May 4, 1988. However, the district director characterized the applicant's entry into this country with a B-2 visitor's visa on September 22, 1987 as a lawful entry despite the fact that she has always claimed she was returning to an unrelinquished, unlawful residence in the United States that had been initially established when she purportedly entered this country in January 1981. The applicant was granted thirty days to respond to the notice.

In response, counsel submitted a statement in which he asserted that the applicant had submitted sufficient evidence in support of her claim continuous residence for the period in question. The applicant also provided a separate statement in which she reiterated her claim of continuous residence in the United States since January of 1981.

The district director determined that the applicant had failed to demonstrate that she continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988 as required under section 1104(c)(2)(B)(i) of the LIFE Act, and therefore, denied the Form I-485 LIFE Act application on March 1, 2004.

Counsel's statements on appeal regarding the sufficiency of the evidence submitted by the applicant in support her claim of continuous residence in this country for the requisite period have been considered. However, the evidence submitted by the applicant relating to her residence in the United States from prior to January 1, 1982 lacks sufficient detail, contains no verifiable information, and does not corroborate critical elements of the applicant's claim of residence in this country for the requisite period. While it is acknowledged that it may be difficult to obtain supporting documentation relating to a period that occurred some twenty years ago, the mere passage of time is insufficient to explain the lack of substantive and probative testimony contained in the documentation submitted in support of the applicant's claim of residence in the United States for period in question.

In support of her appeal, the applicant submits another affidavit signed by [REDACTED] who had previously provided another affidavit in support of her claim of residence in this country for the requisite period. [REDACTED] states that h he has known the applicant since 1981 and that she worked "...as a housekeeping aide in our shop..." from 1985 to 1988. However, [REDACTED] again fails to provide any relevant, pertinent, and verifiable testimony, such as the applicant's address(es) of residence in this country during that period since prior to January 1, 1982.

The applicant provides an affidavit that is signed by [REDACTED] declares that he has been a close friend of the applicant's since 1985 and that she occasionally babysat for his children in that period from 1985 to 1988. However, the applicant failed to provide any explanation as to why she failed to list her employment for [REDACTED] at part #36 of the Form I-687 application where applicants were asked to list all employment in the United States since entry. Further, [REDACTED] failed to attest to the applicant's residence in this country from prior to January 1, 1982 up until that date he purportedly met the applicant in 1985.

The applicant includes a three page "Affidavit of Diligent Search" on the letterhead of [REDACTED] Special Services, Inc., in Miami, Florida that is signed by private investigator [REDACTED] n. In this affidavit, [REDACTED] details her unsuccessful attempts to locate an individual named [REDACTED] on the applicant's behalf. The affidavit fails to provide any information that would tend to support the applicant's claim of residence in the United States for the period in question.

The applicant submits a photocopy of a receipt from the Pasteur Medical Clinics in Hialeah, Florida that bears the applicant's name, her signature, and the dates August 14, 1981 and September 11, 1981. However, it must be noted that this photocopied receipt is identical to the photocopied receipt from Pasteur Medical Clinics that the applicant previously submitted with her Form I-485 LIFE Act application except for those portions of the receipts relating to the years, 1981 and 1989, each receipt was purportedly issued. Further, it appears that an attempt has been made to erase or alter the dates on the photocopied receipt the applicant provides on appeal. Even if the photocopied receipt containing the dates August 14, 1981 and September 11, 1981 was genuine, the applicant fails to

provide any explanation as to why she did not previously submit this receipt as evidence of her residence in this country during the requisite period as such receipt letter was purportedly in her possession since the date it was executed in August 1989.

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. 582 (BIA 1988).

The absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of residence for the requisite period seriously undermines the credibility of this claim, as well as the credibility of the documents submitted in support of such claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet her burden of proof in establishing that she has resided in the United States since prior to January 1, 1982 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M-*, 20 I&N Dec. at 77.

Given the applicant's reliance upon documents with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 as required under section 245A(a)(2) of the Act. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

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