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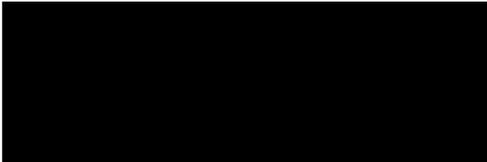
Date: MAY 30 2007

MSC 02 248 64763

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. Any further inquiry must be made to that office.

Robert Q. 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, Chicago, Illinois, and is now before the Administrative Appeals Office 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 asserts that the applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel argues that the director did not follow its own internal policy on reviewing said application, and did not give proper weight to the evidence submitted.

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).

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 May 22, 2002, from [REDACTED] of Huntley, Illinois, who indicated he has known the applicant since 1981 when she came to the United States to reside with her family. The affiant asserted that he has remained in contact with the applicant since that time.
- A notarized affidavit dated May 19, 2002, from [REDACTED] of Chicago, Illinois, who indicated that she has known the applicant since 1981. The affiant asserted that she was a co-worker of the applicant for ten years and was a neighbor for seven.
- An affidavit notarized May 22, 2002, from [REDACTED] of Chicago, Illinois, who indicated that she has known the applicant since 1981. The affiant indicated that she was a co-worker of the applicant from 1991 to 2001 at Edgewater Hospital.
- An affidavit notarized March 23, 2003, from a brother, [REDACTED] of Chicago, Illinois, who indicated that the applicant resided with him at [REDACTED] Chicago, Illinois from 1985 to 1995. The affiant provided a copy of his lease agreement entered into on October 1, 1985, and a letter from vice president of Khan & Associates, who attested to his residence at [REDACTED] [REDACTED] from October 1, 1985 to October 30, 1998.
- Two medical documents from N.R. Laboratories, Inc. in Chicago, Illinois dated June 20, 1982 and July 10, 1985.
- A letter dated February 7, 1991 from [REDACTED], manager/owner of Mayur India Restaurant in Chicago, Illinois, who indicated that the applicant was employed as an Indian vegetarian cook from January 1982 to November 1989.
- An affidavit notarized May 17, 2003 from [REDACTED], who indicated that she first met the applicant at a park in 1981, and has spoken to the applicant a couple times a year since that time.
- A letter dated May 12, 2003, from a representative of Horizon Realty Group, who indicated that its company purchased the building at [REDACTED], Chicago, Illinois in June 2002, and have no records of previous tenants, including the applicant.
- A letter dated May 2, 2003 from [REDACTED] founder/pastor of India Mission Telugu Methodist Church in Oak Park, Illinois, who indicated that he has known the applicant since 1981 and “she comes to our Church and attends on special occasions.”

On appeal, counsel provides a copy of the legacy Immigration and Naturalization Services (INS) memorandum dated February 13, 1989, which provided the following guidance on the evidentiary weight of affidavits in legalization applications under section 245A of the Immigration and Nationality Act (enacted as part of the Immigration Reform and Control Act of 1986, or “IRCA”):

In those applications where the only documentation submitted is affidavits, if the affidavits are credible and verifiable, are sufficient to establish the facts at issue and there is no adverse information, the application shall be approved. If found insufficient or not credible, attempts to verify the authenticity of the information should be made ...

The AAO agrees that the 1989 legacy INS memorandum provides valid guidance for adjudicating legalization applications under section 1104 of the LIFE Act. Applying that guidance in the instant case, however, the AAO does not view some of the affidavits discussed above as substantive enough to support a finding that the applicant entered and began residing in the United States before January 1, 1982 through May 4, 1988. The applicant has put forth contradicting and inconsistent documentation for which no explanation has been provided. Specifically:

1. [REDACTED] indicated that the applicant was employed at his restaurant from January 1982 to November 1989. The applicant, however, did not claim on her Form I-687 application employment with this affiant. The affiant indicated that she was self-employed as a babysitter throughout the period in question.
2. [REDACTED] and [REDACTED] all claimed to have known the applicant since 1981, but provided no address for the applicant during the period in question.
3. [REDACTED] letter 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.
4. [REDACTED]'s lease agreement reflected that he resided at [REDACTED], Chicago, Illinois commencing October 1, 1985. However, on her Form I-687 application, the applicant claimed residence at this address from March 1985.
5. The medical reports from N.R. Laboratories, Inc. may only serve to establish the applicant's presence in the United States on June 20, 1982 and July 10, 1985, as no *credible* evidence has been submitted to establish her residence in the United States during this period.

The AAO does not regard these documents as "sufficient to establish the facts at issue," as the 1989 memorandum directs.

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).

Given the credibility issues arising from the documentation provided by the applicant, it is determined 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 from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

Finally, beyond the decision of the director, it must be noted that the applicant indicated on her LIFE application that she has a son who was born in India on August 17, 1983. On her Form I-687 application, the applicant failed to disclose the *actual* date of birth of her son and that she had been out of the United States during the period she had given birth to her son. The applicant's significant omissions of these facts, are a strong indication that the applicant was either not in the United States during the requisite period or may have been

outside the United States beyond the period of time allowed by regulation. As the appeal will be dismissed on the grounds discussed above, this issue need not be examined further.

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