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**U.S. Citizenship
and Immigration
Services**

22

[Redacted]

FILE:

MSC 02 236 61360

Office: CHICAGO

Date:

SEP 07 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:

[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. 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.

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, Chicago, Illinois, and 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 was physically present in the United States since before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the director's decision is "irresponsible and against the rules and regulations set forth by the LIFE ACT regulations." Counsel submits a brief and copies of previously submitted documentation in support of the appeal.

The director erred in his determination that the applicant had not established physical presence in the United States from prior to January 1, 1982 through May 4, 1988. 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 must only establish that he or she was continuously *physically present* in the United States from November 6, 1986 through May 4, 1988. Section 1104(c)(2)(C) of the LIFE Act; 8 C.F.R. § 245a.11(c). Nonetheless, the evidence does not establish that the applicant has submitted sufficient evidence to establish continuous residency in the United States during the requisite period.

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 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 March 15, 1990, the applicant stated that she first arrived in the United States in August 1981 when she crossed the border without inspection. On her Form I-687, Application for Status as a Temporary Resident, which she also signed under penalty of perjury on March 15, 1990, the applicant stated that she left the United States only once during the requisite period, from August 10 to September 10, 1987, when she traveled to India for a family emergency.

The applicant stated that during the qualifying period, she lived at the following addresses:

August 1981 to April 1984
May 1984 to July 1987
August 1987 to December 1989

The applicant also stated that she worked as a self-employed babysitter and tailor from September 1981 to July 1987, and as a baker with Dunkin Donuts in Bolingbrook from September 1987 to December 1989.

In a July 24, 1992 affidavit, the applicant stated that she left India in August 1981 with her husband, son and two daughters. She further stated that she crossed the border from Canada into Buffalo, New York, and then traveled to Philadelphia where she lived at [REDACTED] from August 1981 to May 1984. The applicant stated that after leaving Philadelphia, she and her family moved to Chicago and lived with a friend at [REDACTED] "for a few weeks." The applicant stated that she was hired as a shampoo girl in the beauty shop of [REDACTED] and that as part of her remuneration, she and her family lived in the [REDACTED]'s home at [REDACTED], and lived there for a year and a half. The applicant stated that her family returned to live with her friend at [REDACTED] in December 1986, and that they all moved to [REDACTED] in August 1987.

The information provided by the applicant in her affidavit is inconsistent with that which she provided on her Form I-687 application. The applicant did not state on her Form I-687 application that she worked in a beauty shop at any time, and did not state in her affidavit that she worked at Dunkin Donuts. Additionally, the applicant stated on her Form I-687 application that she lived at [REDACTED] in Chicago from May 1984 to July 1987. However, in her affidavit the applicant stated that she lived at [REDACTED] "for a few weeks" in 1984 before moving to [REDACTED], where she lived until December 1986 before returning to [REDACTED]. 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. 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. 582, 591 (BIA 1988).

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

1. A copy of a May 19, 1992 statement from [REDACTED] a medical doctor, in which he stated that he had known the applicant for the past ten years. The record also contains a copy of a prescription written [REDACTED] for the applicant's daughter dated September 19, 1981.

2. A copy of a June 2, 1992 notarized statement from [REDACTED] in which she stated that she had known the applicant for the past 10 years, and that the applicant lived with her and [REDACTED] from August 1981 to April 1984.
3. A copy of a December 14, 2001 notarized statement from [REDACTED]; in which he stated that the applicant and her family shared his apartment at [REDACTED] in Philadelphia from August 1981 to April 1984. The applicant did not state that she had ever lived [REDACTED]. Additionally, as discussed immediately above, [REDACTED] stated that she also lived with [REDACTED] and the applicant on [REDACTED] during this same time frame. However, [REDACTED] did not state that they changed residences at any time from August 1981 to April 1984. In a June 2, 1992 notarized statement, [REDACTED] stated that the applicant and her family lived with him at [REDACTED] but did not state that they accompanied him when he moved to [REDACTED].
4. A copy of a July 21, 1992 notarized statement from [REDACTED] in which she stated that the applicant lived with her at [REDACTED] in Chicago for two weeks in May 1984 and again from December 1986 to July 1987, before they all moved to [REDACTED] 53 in Woodridge, where they lived together until December 1989. [REDACTED] reiterated these statements in a December 17, 2001 acknowledgment. As discussed above, the applicant stated on her Form I-687 application that she lived [REDACTED] from May 1984 to July 1987. The applicant submitted no competent objective evidence to explain this inconsistency. *Matter of Ho*, 19 I&N Dec. at 591-92.
5. A copy of a May 26, 1992 notarized statement from [REDACTED] in which she stated that the applicant worked for her as a shampoo girl in 1984 and patronized her shop as a customer until 1989. [REDACTED] also stated that the applicant lived with her "from time to time." [REDACTED] repeated these statements in a December 12, 2001 notarized letter. [REDACTED] statements contradict that of the applicant in her July 24, 1992 affidavit, in which she stated that she lived with [REDACTED] for a year and a half as part of her remuneration for working in [REDACTED] beauty shop. The applicant submitted no documentary evidence to resolve this inconsistency or to corroborate her employment with [REDACTED].
6. A copy of a July 22, 1992 affidavit from [REDACTED] in which he stated that he had known the applicant since 1984, and that they used to meet in the community center in Chicago.

The applicant also submitted copies of envelopes addressed to the applicant in care of [REDACTED] in Philadelphia. The postmarks on the envelopes, however, are illegible and are not probative in establishing the applicant's presence and residency in the United States during the required period.

In response to the director's Notice of Intent to Deny dated July 16, 2003, the applicant submitted a copy of an immunization and health record for her son from the DuPage County (Wheaton, Illinois) Health Department. The record purports to show that the applicant's son received booster shots through the department on October 24, 1981 and on March 27, 1987. However, these entries are questionable, as the applicant claimed to have lived in Philadelphia, Pennsylvania from August 1981 to April 1984, and therefore could not have established a county health record for her son in Illinois. Additionally, an entry on the record indicates that the applicant's son received an immunization shot on March 30, 1986 in India. While it is conceivable that her son was in India without her on that date, we note that the applicant

stated that her only absence from the United States during the requisite period was from August 10 September 1987.

The applicant has provided contradictory evidence regarding her employment during the requisite period as well as her places of residence. The applicant submitted no contemporaneous documentation to establish that she was present and living in the United States from prior to January 1, 1982 to May 4, 1988.

On appeal, counsel states that the applicant's husband and three children were granted permanent residency by other district offices "with supporting evidence that was almost exclusively the same as the evidence presented by the applicant." If the previous applications were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Given the absence of any 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 application on December 30, 2005. The record does not reflect that the director has made a final disposition on that application, and it is not at issue in this decision.

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