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U.S. Department of Homeland Security
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U.S. Citizenship
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FILE: [Redacted]
MSC 02 233 60917

Office: LAS VEGAS

Date: **APR 15 2008**

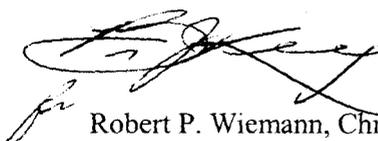
IN RE: Applicant: [Redacted]

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.


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 (director) in Las Vegas, Nevada. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application because the applicant failed to establish that she entered the United States before January 1, 1982, and resided continuously in the United States in an unlawful status from that date through May 4, 1988.

On appeal, the applicant asserts that the information and evidence provided at her interview(s) for LIFE legalization were sufficient to establish her eligibility for permanent resident status.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. *See* section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

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 its amenability to verification. *See* 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).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The applicant, a native of Thailand who claims to have lived in the United States since 1981, filed her application for legal permanent resident status (Form I-485) on May 21, 2002. As evidence of her residence in the United States during the 1980s the applicant submitted:

- Photocopied pages from her mother's old passport from Thailand showing an entry into the United States on May 8, 1981, the issuance of a B-1/B-2 multiple entry visa by the U.S. Embassy in Bangkok on May 17, 1983, valid for five years, and an entry into the United States with that visa on August 24, 1983.
 - Photocopied pages from the applicant's old passport, issued in 1995 by the Thai consulate in Los Angeles, with an entry stating that the applicant had previously traveled on a passport issued in Thailand on May 4, 1983.
 - A certified copy of the applicant's cumulative record from junior and senior high school in Los Angeles, California, which shows that she entered Emerson Junior High School on September 12, 1983 and advanced to Marshall High School for the 1984-1985 academic year.
- A photocopy of a California driver license issued to the applicant on March 6, 1986.

On January 16, 2004, the director issued a Notice of Intent to Deny (NOID), indicating that the evidence of record did not establish the applicant's entry into the United States before January 1, 1982, and continuous unlawful residence in the United States through May 4, 1988. The director cited Service records indicating that the applicant entered the United States at Honolulu, Hawaii, as a B-2 visitor for pleasure with her mother on August 24, 2003. That date of entry is confirmed by a stamp in the applicant's initial passport, which is the applicant's first recorded entry into the United States under a multiple entry B-1/B-2 visa that was issued (like her mother's) by the U.S. Embassy in Bangkok on May 17, 1983. The director granted the applicant thirty (30) days to submit additional evidence.

The applicant did not respond to the NOID. On March 10, 2004, therefore, the director denied the application on the ground that the applicant had failed to establish her continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as required to be eligible for legalization under the LIFE Act.

On appeal the applicant asserts that the statements she made at her interviews for LIFE legalization in 2003, as well as the previously submitted documentation, is sufficient to establish her continuous residence in the United States from before January 1, 1982 through May 4, 1988. The AAO does not agree.

The documentation submitted by the applicant shows that she entered the United States on a nonimmigrant B-1/B-2 visa in August 1983, was enrolled in a Los Angeles junior high school the following month, and continued to dwell in the United States in succeeding years, as indicated by subsequent school records and a California driver license. However, there is no evidence whatsoever of the applicant's residence or physical presence in the United States prior to the initial arrival recorded in her passport on August 24, 1983. No documentation has been submitted by the applicant, either in response to the NOID or on appeal, to fill in this evidentiary gap.

Thus, the applicant has failed to establish that she entered the United States before January 1, 1982, and that she resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A). Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

The appeal will be dismissed, and the application denied.

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