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U.S. Department of Homeland Security
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U.S. Citizenship
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FILE: [REDACTED]
MSC 02 242 63226

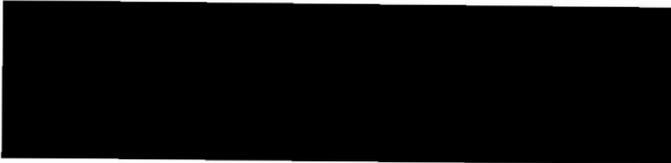
Office: MIAMI (TAMPA)

Date: APR 25 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:



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 Records 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, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On October 21, 2005, the director denied the application because 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, and based his decision on the applicant's failure to respond to the Notice of Intent to Deny (NOID). After the applicant appealed the decision on November 23, 2005, the director determined that the applicant had timely responded to the NOID, and issued a new decision on January 9, 2006, again denying the application. However, the director did not withdraw his previous decision. Further, as the applicant had timely submitted an appeal to the AAO, the director no longer had jurisdiction over the application. The director correctly forwarded the applicant's October 21, 2005, appeal to the AAO for adjudication.

The applicant indicated on the Form I-290B, Notice of Appeal to the Administrative Appeals Unit, that a brief and/or additional evidence would be submitted within 30 days of filing the appeal. As of the date of this decision, however, no further documentation has been received by the AAO. Therefore, the record will be considered complete as presently constituted.

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 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 her Form I-687, Application for Status as a Temporary Resident, which she signed under penalty of perjury on April 11, 1990, the applicant did not identify any absences from the United States, any church, organization, or other affiliation during the qualifying period, and did not identify any employers. The applicant claimed to have lived in Houston, Texas from February 1981 to August 1985, and in Riverside, California from September 1985 to October 1988. However, she did not identify any specific addresses at which she lived.

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

1. An April 4, 1990, affidavit from [REDACTED], with an address in Riverside, California, in which he stated that the applicant is the wife of his friend, and that she lived with him in Houston, Texas from February 1981 to August 1985.
2. An August 19, 2005, affidavit from [REDACTED] in which he affirmed that he had known the applicant since February 1984. He stated that they "used to meet each other at my home when she was in Houston, Texas."
3. An April 4, 1990, affidavit from [REDACTED], in which he stated that the applicant is the wife of his friend, and that she lived with the affiant in Riverside, California from September 1985 to October 1988.
4. An August 25, 2005, affidavit from [REDACTED], in which he states that he has known the applicant for 18 years. The affiant stated that he knows the applicant from her participation in religious services and cultural festivities near her home in Tampa. However, the affiant did not state the basis of his relationship and knowledge of the applicant upon her arrival in the United States when she alleged to have lived in Texas and California.
5. An August 29, 2005, letter from [REDACTED] Inc. (BAPS), signed by [REDACTED], Chief Executive Officer, in which he stated that the applicant "regularly visited" the temple in Whittier, California during 1987 "and a few years thereafter." The letter did not indicate whether the information regarding the applicant's attendance was taken from church records and did not indicate the applicant's address at the time she attended the temple, as required by 8 C.F.R. § 245a.2(d)(3)(v).
6. A copy of an apartment lease in Riverside, California, dated April 1, 1988, showing the applicant as one of the tenants.

The applicant also submitted an August 23, 2005, affidavit from [REDACTED] who declared that the applicant's husband worked at his motel in California "for about a year time period in 1987 or 1988." The affiant did not name the hotel and did not attest to the applicant's presence and residence during that time frame.

As stated in *Matter of E-M-*, the evidence must be evaluated not only on its quantity but also on its quality. While affidavits in certain cases can effectively meet the preponderance of evidence standard, the applicant had not met that standard in this case. The statements and affidavits submitted by the applicant are generally from close friends who provide only general statements regarding the applicant's residence in the United States. The applicant submitted no contemporaneous documentation of her residence in the United States and provided no corroborative documentation that either she or her friends who alleged that she resided with them, lived in the stated locations during the qualifying period.

The applicant's evidence is lacking in both quantity and quality and fails to establish by a preponderance of the evidence that she resided in the United States during the requisite period. Accordingly, it is concluded that the applicant has failed to establish continuous residence in the U.S. for the required period

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