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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
MSC 01 359 63438

Office: NEW YORK

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:

[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 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.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, New York, New York, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The applicant filed a motion to reopen; however, pursuant to 8 C.F.R. § 245a.20(c), a motion by the applicant to reopen a proceeding will not be considered. The applicant's motion to reopen was forwarded to the Administrative Appeals Office as an appeal. The appeal will be dismissed.

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.

On appeal, counsel asserts that the director failed to give weight to the applicant's affidavits. Counsel submits additional 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. 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 a June 25, 1991, form to determine class membership, the applicant stated that she first arrived in the United States on August 28, 1980, when she crossed the border without inspection. On her Form I-687, Application for Status as a Temporary Resident, which she signed under penalty of perjury on June 25, 1991, the applicant stated that she lived at [REDACTED] Richmond Hill, New York from the date of

her entry into the United States until September 1990. The applicant also stated that she worked as a babysitter and seamstress at her home throughout that same period.

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

1. An undated notarized statement from [REDACTED] in which she stated that she had known the applicant for over 25 years, and that the applicant on “[h]er first visit in the United States of America in 1980 – she came to stay at my residence in Richmond Hill Queens N.Y. During her stay in Queens N.Y. she assist [sic] in babysitting my eldest child.” Ms. [REDACTED] also stated:

She left and went back to Guyana in 1984 to marry . . . and then returned to the U.S.A. a month later. She also left the U.S. to visit relatives in Canada and came back to U.S.A in the year 1987 (during that time I was well acquainted with [her] whereabouts) even when she went on her last visit to Guyana in 1990.

2. A June 11, 1991, notarized statement from [REDACTED], in which she stated that she had known the applicant for 25 years, and can attest that the applicant went to Canada in June 1987 and remained for approximately one month. The affiant stated that she picked up the applicant’s ticket from the travel agent, “dropped her off at the airport,” and picked her up at the border in Buffalo when she returned.
3. A copy of a December 23, 2003, letter from the Heendu Learning Center, Inc., in New York. The letter is signed by [REDACTED] and stated that he has “come into contact” with the applicant “frequently during the last Fifteen years.”

On January 21, 2004, the director issued a Notice of Intent to Deny in which she notified the applicant that her evidence was insufficient to meet her burden of proof and provided the applicant with 30 days in which to submit additional evidence. In response, the applicant submitted the following additional documentation:

4. A February 9, 2004, affidavit from [REDACTED], in which she now stated that the applicant lived with her at [REDACTED] in Richmond Hill, New York until September 1990. The affiant stated that she and the applicant “were family friends from back home.”
5. A February 9, 2004, notarized statement from [REDACTED], in which he stated that he had known the applicant since their childhood days in Guyana. Mr. [REDACTED] stated that the applicant visited him at his residence in Brooklyn in 1980, and brought “stuff for [his] relatives back home” when she made trips to Guyana in 1984 and 1990.

On appeal, counsel asserts that the director’s failure to accord weight to the affidavits contravenes CIS policy and court rulings, and that the director looked for “solid evidence like bank accounts [and] tax returns.”

As stated in *Matter of E-M-*, the evidence must be evaluated not only on the quantity but also on the quality. While affidavits in certain cases can effectively meet the preponderance of evidence standard, the applicant has failed to meet that standard in this case. The applicant submitted affidavits only from close

friends. The one exception is the affidavit from the Heendu Learning Center, which only places the applicant in the United States as early as 1988. The applicant submitted no documentation from an objective witness that would verify her residence and presence in the United States prior to January 1, 1982, until May 4, 1988. The applicant submitted no contemporaneous documentation such as postmarked envelopes or similar documentation to establish that she lived in the United States during the required 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.

Given this, 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.